

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

JANE DOE AS MOTHER OF MINOR DOE,  
HANNAH LANDERER, AND STEVEN  
MARKS, ON BEHALF OF THEMSELVES  
AND ALL OTHERS SIMILARLY SITUATED,

Plaintiffs,

v.

CARELON BEHAVIORAL HEALTH, INC.

Defendant.

Civil Action No. 1:25-cv-03489

**DEFENDANT CARELON BEHAVIORAL HEALTH, INC.'S  
NOTICE OF MOTION TO DISMISS**

PLEASE TAKE NOTICE that Defendant Carelon Behavioral Health, Inc. (“Carelon”), shall move this Court before the Honorable Edgardo Ramos of the United States District Court for the Southern District of New York, located at 40 Foley Square, New York, NY 10007, on such date and time as the Court may direct, for an Order pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure to dismiss the Plaintiffs’ complaint with prejudice. Anthem requests the Court hear oral argument on the Motion to Dismiss.

PLEASE TAKE FURTHER NOTICE that in support of its Motion to Dismiss, Anthem will rely upon the accompanying Memorandum of Law, the Declaration of Matthew J. Aaronson, the pleadings, papers, and other documents on file, and such further evidence or argument as the Court may consider.



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by CM/ECF to all counsel of record on this 29th day of August 2025.

*/s/ Matthew J. Aaronson*  
\_\_\_\_\_  
Matthew J. Aaronson

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

JANE DOE as mother of MINOR DOE,  
HANNAH LANDERER, and STEVEN  
MARKS, on behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

CARELON BEHAVIORAL HEALTH, INC.

Defendant.

Civil Action No. 1:25-cv-03489

**DEFENDANT CARELON BEHAVIORAL HEALTH, INC.'S  
MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS**

Matthew J. Aaronson  
TROUTMAN PEPPER LOCKE LLP  
875 Third Avenue  
New York, NY 10022  
T: (212) 704-6000  
matthew.aaronson@troutman.com

*Attorneys for Defendant  
Carelon Behavioral Health, Inc.*

Date: August 29, 2025  
New York, New York

**TABLE OF CONTENTS**

INTRODUCTION ..... 1

FACTUAL ALLEGATIONS ..... 4

LEGAL STANDARD..... 5

ARGUMENT ..... 6

I. PLAINTIFFS’ CONTRACT CLAIMS MUST BE DISMISSED BECAUSE THE ALLEGATIONS DO NOT ESTABLISH THE EXISTENCE OF ANY CONTRACT ENFORCEABLE BY PLAINTIFFS ..... 6

A. There Is No Contractual Privity Between Plaintiffs and Carelon..... 6

B. Plaintiffs Are Not Intended Third-Party Beneficiaries of the NYSHIP Contract..... 9

II. PLAINTIFFS’ CLAIMS UNDER N.Y. GBL §§ 349 AND 350 MUST BE DISMISSED BECAUSE THE ALLEGED DECEPTIVE PRACTICE WAS FULLY DISCLOSED..... 10

III. PLAINTIFFS’ CLAIM UNDER INSURANCE LAW § 4226 MUST BE DISMISSED BECAUSE CARELON IS NOT AN INSURER..... 12

IV. PLAINTIFFS’ CLAIM FOR FRAUDULENT MISREPRESENTATION MUST BE DISMISSED BECAUSE THEY DO NOT ALLEGE FACTS SHOWING REASONABLE RELIANCE OR A DUTY TO DISCLOSE ..... 14

V. PLAINTIFFS’ CLAIM FOR NEGLIGENT MISREPRESENTATION MUST BE DISMISSED BECAUSE THEY HAVE NOT ALLEGED A SPECIAL RELATIONSHIP OR ACTUAL RELIANCE ..... 16

A. There Is No “Special Relationship” Between Plaintiffs and Carelon..... 16

B. Plaintiffs Do Not Plead Reasonable Reliance..... 17

VI. PLAINTIFFS’ CLAIM FOR UNJUST ENRICHMENT MUST BE DISMISSED BECAUSE PLAINTIFFS HAVE CONFERRED NO BENEFIT ON CARELON, AND BECAUSE IT IS DUPLICATIVE OF PLAINTIFFS’ LEGAL CLAIMS ..... 17

A. Plaintiffs Conferred No Specific and Direct Benefit on Carelon ..... 17

B. Plaintiffs’ Unjust Enrichment Claim Is Duplicative of Their Other Claims ..... 18

CONCLUSION..... 19

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>Ancile Inv. Co. v. Archer Daniels Midland Co.</i> , 784 F. Supp. 2d 296 (S.D.N.Y. 2011).....	7
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	5
<i>Banque Arabe et Internationale D’Investissement v. Maryland Nat’l Bank</i> , 57 F.3d 146 (2d Cir. 1995).....	15
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007).....	5
<i>Broder v. MBNA Corp.</i> , 281 A.D.2d 369 (1st Dep’t 2001) .....	11
<i>Carlin v. Davidson Fink LLP</i> , 852 F.3d 207 (2d Cir. 2017).....	5
<i>Chambers v. Time Warner, Inc.</i> , 282 F.3d 147 (2d Cir. 2002).....	4, 5
<i>Chevron Corp. v. Donziger</i> , 871 F. Supp. 2d 229 (S.D.N.Y. 2012).....	18
<i>Chufen Chen v. Dunkin’ Brands, Inc.</i> , 954 F.3d 492 (2d Cir. 2020).....	11, 12
<i>Consol. Edison, Inc. v. Northeast Utils.</i> , 426 F.3d 524 (2d Cir. 2005).....	7
<i>DeBlasio v. Merrill Lynch &amp; Co.</i> , No. 07CIV318(RJS), 2009 WL 2242605 (S.D.N.Y. July 27, 2009) .....	15
<i>DeFlora Lake Dev. Assocs., Inc. v. Hyde Park</i> , 654 F. App’x 9 (2d Cir. 2016) .....	6
<i>Demand Elec., Inc. v. Innovative Tech. Holdings, LLC</i> , 665 F. Supp. 3d 498 (S.D.N.Y. 2023).....	6
<i>Diamond Castle Partners IV PRC, L.P. v. IAC/InterActivecorp</i> , 82 A.D.3d 421 (1st Dep’t 2011) .....	10

*Dormitory Auth. v. Samson Constr. Co.*,  
30 N.Y.3d 704 (2018) .....10

*Ellington Credit Fund, Ltd. v. Select Portfolio Servicing, Inc.*,  
837 F. Supp. 2d 162 (S.D.N.Y. 2011).....8

*Fasolino Foods Co. v. Banca Nazionale del Lavoro*,  
961 F.2d 1052 (2d Cir. 1992).....6

*Ferdous v. Hasan*,  
236 A.D.3d 992 (2d Dep’t 2025) .....17, 18, 19

*Fernandez v. Zoni Language Ctrs., Inc.*,  
No. 15-CV-6066 (PKC), 2016 WL 2903274 (S.D.N.Y. May 18, 2016), *aff’d*,  
858 F.3d 45 (2d Cir. 2017).....13

*Fero v. Excellus Health Plan, Inc.*,  
236 F. Supp. 3d 735 (W.D.N.Y. 2017) .....15, 16

*Fleet Bank v. Pine Knoll Corp.*,  
290 A.D.2d 792 (3d Dep’t 2002) .....16

*Fuisz v. 6 E. 72nd St. Corp.*,  
222 A.D.3d 402 (1st Dep’t 2023) .....10

*Garrett v. Music Publ’g Co. of America, LLC*,  
740 F. Supp. 2d 457 (S.D.N.Y. 2010).....6

*Ginsburg Dev. Cos. v. Carbone*,  
134 A.D.3d 890 (2d Dep’t 2015) .....16

*Granite Partners, L.P. v. Bear, Stearns & Co.*,  
58 F. Supp. 2d 228 (S.D.N.Y. 1999).....15

*Guzman v. Ramos*,  
191 A.D.3d 644 (2d Dep’t 2021) .....6

*Hillside Metro Assocs., LLC v. JPMorgan Chase Bank, Nat’l Ass’n*,  
747 F.3d 44 (2d Cir. 2014).....9

*Kaye v. Grossman*,  
202 F.3d 611 (2d Cir. 2000).....17

*Kramer v. Time Warner Inc.*,  
937 F.2d 767 (2d Cir. 1991).....5, 12

*Liberty Mut. Ins. Co. v. Donegan*,  
746 F.3d 497 (2d Cir. 2014), *aff’d*, 577 U.S. 312 (2016) .....7

*Lipton v. Unumprovident Corp.*,  
10 A.D.3d 703 (2d Dep’t 2004) .....8

*Mandarin Trading Ltd. v. Wildenstein*,  
16 N.Y.3d 173 (2011) .....14

*Mazella v. Coca-Cola Co.*,  
548 F. Supp. 3d 349 (S.D.N.Y. 2021).....11, 12

*In re MBIA, Inc., Sec. Litig.*,  
700 F. Supp. 2d 566 (S.D.N.Y. 2010).....12

*Metro. Life Ins. Co. v. Massachusetts*,  
471 U.S. 724 (1985).....7

*Pelman v. McDonald’s Corp.*,  
237 F. Supp. 2d 512 (S.D.N.Y. 2003).....11, 12

*Perma Pave Contracting Corp. v. Paerdegat Boat & Racquet Club, Inc.*,  
156 A.D.2d 550 (2d Dep’t 1989) .....7

*Regnante v. Sec. & Exch. Offs.*,  
134 F. Supp. 3d 749 (S.D.N.Y. 2015).....18

*S.P. v. Dongbu Ins. Co.*,  
174 A.D.3d 911 (2d Dep’t 2019) .....8

*Samiento v. World Yacht Inc.*,  
10 N.Y.3d 70 (2008) .....18

*Simeone v. T. Marzetti Co.*,  
No. 21-CV-9111 (KMK), 2023 WL 2665444 (S.D.N.Y. Mar. 28, 2023) .....13

*Smith v. Local 819 I.B.T. Pension Plan*,  
291 F.3d 236 (2d Cir. 2002).....5

*Town of Wallkill v. Rosenstein*,  
40 A.D.3d 972 (2d Dep’t 2007) .....19

*Tsinias Enters. Ltd. v. Taza Grocery, Inc.*,  
172 A.D.3d 1271 (2d Dep’t 2019) .....14

*Tuosto v. Philip Morris USA Inc.*,  
No. 05CIV.9384(PKL), 2007 WL 2398507 (S.D.N.Y. Aug. 21, 2007).....15

*TVT Recs. & TVT Music, Inc. v. Island Def Jam Music Grp.*,  
244 F. Supp. 2d 263 (S.D.N.Y. 2003).....8, 10

**Statutes**

N.Y. Gen. Bus. Law § 349.....1, 2, 4, 10, 11, 12  
N.Y. Gen. Bus. Law § 350.....1, 2, 4, 10, 11, 12  
N.Y. Ins. Law § 1102.....13  
N.Y. Ins. Law § 4226.....1, 2, 3, 4, 12, 14

**Other Authorities**

Fed. R. Civ. P. 12.....1, 5  
Fed. R. Evid. 201 .....5, 12

Defendant Carelon Behavioral Health, Inc. (“Carelon”), through its undersigned counsel, submits this Memorandum of Law in Support of its Motion to Dismiss the Complaint (ECF No. 1) (“Complaint” or “Compl.”) filed by “Jane Doe” on behalf of her minor child “Minor Doe,” Hannah Landerer, and Steven Marks (collectively, “Plaintiffs”) pursuant to Fed. R. Civ. P. 12(b)(6).

### **INTRODUCTION**

Plaintiffs are employees of the State of New York and enrollees in the New York State Health Insurance Program (“NYSHIP”), which is a health insurance plan operated by New York for the benefit of state employees, retirees, and their dependents. NYSHIP offers a “Preferred Provider Organization” plan, for which Carelon administers mental health benefits. Carelon has administered the plan under a written contract with the New York State Department of Civil Service since 2016.

The gravamen of Plaintiffs’ complaint is their allegation that Carelon’s directory of participating, or “in-network,” providers contains inaccurate information about the listed mental-health providers. Plaintiffs contend these alleged inaccuracies render the Plan’s materials “deceptive,” and assert they were unable to identify in-network providers, resulting in damages due to delaying treatment and/or incurring out-of-pocket costs to see out-of-network providers.

Based on these allegations, Plaintiffs assert eight state-law claims on behalf of themselves and a putative class: (1) breach of contract; (2) breach of the covenant of good faith and fair dealing; (3) violation of N.Y. Gen. Bus. Law (“GBL”) § 349; (4) violation of N.Y. GBL § 350; (5) violation of N.Y. Ins. Law § 4226; (6) fraudulent misrepresentation; (7) negligent misrepresentation; and (8) unjust enrichment.

Carelon disputes the factual allegations of the Complaint and denies that its provider directory is inaccurate or in any way “deceptive.” However, even if Plaintiffs’ allegations are accepted as true—and they are not—the Complaint would be subject to dismissal because each of Plaintiffs’ claims is legally deficient, as pleaded.

Plaintiffs’ first two claims for breach of contract and breach of the covenant of good faith and fair dealing must be dismissed because no contractual privity exists between Plaintiffs and Carelon. Carelon is contracted with the State of New York, not Plaintiffs, and Plaintiffs are not intended beneficiaries of that contract. Nor is Carelon Plaintiffs’ insurer, such that a contractual relationship could be implied or imputed between the parties, as Plaintiffs suggest. As the existence of an enforceable contract is an element of both contract-based claims, Plaintiffs’ first two causes of action must be dismissed.

Plaintiffs’ next two claims under New York’s deceptive practices and deceptive advertising laws must be dismissed because the purportedly deceptive information—the allegedly inaccurate listing of contracted providers—was and remains fully disclosed. Any member of the public can access the provider directory and determine, before signing up for a plan or receiving any services under the plan, whether any given provider is in network or accepting patients, as the allegations of the Complaint clearly demonstrate. Because neither N.Y. GBL § 349 nor § 350 provide a cause of action where the purportedly deceptive conduct is fully disclosed, Plaintiffs’ third and fourth causes of action must be dismissed.

Plaintiffs’ fifth claim under New York Insurance Law § 4226 must be dismissed because it does not apply to Carelon. That section regulates the conduct of insurers authorized to do the business of insurance, including health insurance, in the state of New York. Carelon is not engaged in the business of health insurance in New York and is not authorized by the State to do so.

Accordingly, New York Insurance Law § 4226 does not apply to Carelon, and this cause of action must be dismissed.

Plaintiffs' sixth and seventh claims for fraudulent and negligent misrepresentation must be dismissed because Plaintiffs have failed to plead facts showing reasonable reliance on any purported misrepresentation in selecting the health plan at issue. They have likewise failed to plead the existence of either a special relationship or other duty to disclose that would render any alleged omission actionable. Because justifiable and reasonable reliance is a required element to establish any claim based on a fraudulent representation, and a duty to disclose is a required element of any claim based on a fraudulent omission, Plaintiffs' causes of action based on alleged misrepresentations and omissions must be dismissed.

Finally, Plaintiffs' eighth claim for unjust enrichment must be dismissed because: (1) Plaintiffs do not plead that they conferred and Carelon received a benefit as a result of Plaintiffs' conduct that unjustly "enriched" Carelon, and (2) Plaintiffs' alleged equitable claim is impermissibly duplicative with other relief Plaintiffs have sought or could seek. The Complaint contains no facts showing that Plaintiffs' selection of the health plan at issue resulted in increased or additional payments to Carelon or directly conferred any other benefit on Carelon. The lack of such a direct benefit is fatal to an unjust enrichment claim. And unjust enrichment, as an equitable claim, is unavailable where it is based on facts and conducts that could be pleaded as contract, tort, or statutory claims, which Plaintiffs also have pleaded here. Because Plaintiffs' unjust enrichment claim arises from the same facts, circumstances, and purported damages as their other claims, the unjust enrichment cause of action must be dismissed.

For these reasons, as discussed more fully herein, each of Plaintiffs' causes of action must be dismissed with prejudice for failure to state a claim.

### **FACTUAL ALLEGATIONS**

The State of New York, through its Department of Civil Service, operates NYSHIP to provide health insurance to state employees, retirees, and eligible dependents. ECF Doc. 1-1 [hereinafter “NYSHIP Contract”] at 2. Eligible employees may choose an HMO plan, or a preferred provider organization (PPO) plan, called the “Empire Plan” (the “Plan”), the mental health portion of which is administered by Carelon. Compl. ¶¶ 23, 131; NYSHIP, *Health Insurance Choices for 2025*, at 6.<sup>1</sup>

Plaintiffs are each enrollees in the Plan. Compl. ¶¶ 20–22. Plaintiffs allege Carelon’s directory of providers in its network contains inaccurate information regarding mental health providers, including by listing providers that are not, in fact, in-network, and by listing inaccurate information for those who are. *See, e.g.*, Compl. ¶¶ 1–3, 10, 186–90. Plaintiffs allege this renders the Plan materials “deceptive.” *Id.* ¶¶ 10, 212–23. Plaintiffs assert those alleged inaccuracies caused them damage by delaying treatment and/or incurring the costs of using out-of-network providers. *See, e.g., id.* ¶¶ 3–4, 13–14, 254.

As noted above, based on those allegations, Plaintiffs assert claims for: (1) breach of contract; (2) breach of the covenant of good faith and fair dealing; (3) violation of N.Y. GBL § 349; (4) violation of N.Y. GBL § 350; (5) violation of N.Y. Ins. Law § 4226; (6) fraudulent misrepresentation; (7) negligent misrepresentation; and (8) unjust enrichment. Compl. ¶¶ 268–345.

---

<sup>1</sup> <https://www.cs.ny.gov/employee-benefits/nyship/shared/publications/choices/2025/active-choices-2025.pdf>. Plaintiffs rely on this document as the factual basis for the allegations contained in Paragraph 134 of the Complaint, and the Court accordingly may consider this document in addressing this Motion. *See Chambers v. Time Warner, Inc.*, 282 F.3d 147, 153 (2d Cir. 2002).

### **LEGAL STANDARD**

Each of Plaintiffs' claims is subject to dismissal pursuant to Rule 12(b)(6), as the allegations of the Complaint fail to state a plausible claim for which Plaintiffs are entitled to relief. On a motion to dismiss for failure to state a claim under Rule 12(b)(6), the Court assumes the truth of the factual allegations of the complaint and draws all reasonable inferences in favor of the plaintiff. *See Smith v. Local 819 I.B.T. Pension Plan*, 291 F.3d 236, 240 (2d Cir. 2002). However, "a plaintiff's obligation to provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations and quotations omitted). Thus, the Court is not required to assume the truth of "legal conclusions," or "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Although the Court is generally "confined to the allegations contained within the four corners of [the] complaint" in deciding a Rule 12(b)(6) motion, the Court "may also consider any documents attached to the complaint as an exhibit or incorporated in it by reference," *Carlin v. Davidson Fink LLP*, 852 F.3d 207, 212 (2d Cir. 2017) (alteration in original, internal quotation marks omitted), "matters of which judicial notice may be taken under Fed.R.Evid. 201," *Kramer v. Time Warner Inc.*, 937 F.2d 767, 773 (2d Cir. 1991), or documents the plaintiff relied on in drafting the complaint, *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 153 (2d Cir. 2002).

## ARGUMENT

### **I. PLAINTIFFS’ CONTRACT CLAIMS MUST BE DISMISSED BECAUSE THE ALLEGATIONS DO NOT ESTABLISH THE EXISTENCE OF ANY CONTRACT ENFORCEABLE BY PLAINTIFFS**

Plaintiffs’ first claims for breach of contract and for breach of the covenant of good faith and fair dealing must be dismissed because Plaintiffs’ allegations fail to establish the existence of an enforceable contract between the parties; an essential element of both claims.

“Under New York law, a claim for breach of contract requires: (i) the existence of an enforceable agreement; (ii) adequate performance of the contract by the plaintiff; (iii) a breach of that agreement by the defendant; and (iv) damages resulting from the breach.” *Demand Elec., Inc. v. Innovative Tech. Holdings, LLC*, 665 F. Supp. 3d 498, 504 (S.D.N.Y. 2023) (citing *DeFlora Lake Dev. Assocs., Inc. v. Hyde Park*, 654 F. App’x 9, 10 (2d Cir. 2016)); *Guzman v. Ramos*, 191 A.D.3d 644, 646 (2d Dep’t 2021)). A breach of the covenant of good faith and fair dealing also is “merely a breach of the underlying contract.” *Fasolino Foods Co. v. Banca Nazionale del Lavoro*, 961 F.2d 1052, 1056 (2d Cir. 1992). Thus, “[t]here can be no breach of contract, or the implied covenant of good faith and fair dealing, without a governing valid contract.” *Garrett v. Music Publ’g Co. of America, LLC*, 740 F. Supp. 2d 457, 463 (S.D.N.Y. 2010).

#### **A. There Is No Contractual Privity Between Plaintiffs and Carelon**

Plaintiffs’ breach of contract claim is premised on the allegation that Carelon’s “failure to maintain an accurate directory of in-network providers” constitutes a “breach of the contract between [Carelon] and New York State,” *i.e.*, the NYSHIP Contract. Compl. ¶¶ 271, 273–74. But as Plaintiffs concede, that contract “exists between New York State and Carelon,” *id.* ¶ 269, and Plaintiffs are not parties to it. Indeed, the NYSHIP Contract, the agreement that Plaintiffs contend “obligates Carelon to provide an adequate network,” is attached to the Complaint as Exhibit A. *Id.*

¶ 171. The only parties—and only signatories—to that agreement are the New York State Department of Civil Service and Carelon. NYSHIP Contract at 2, 56.

Under New York law, it is “well settled” that a plaintiff “may not assert a cause of action to recover damages for breach of contract against a party with whom it is not in privity,” *Perma Pave Contracting Corp. v. Paerdegat Boat & Racquet Club, Inc.*, 156 A.D.2d 550, 551 (2d Dep’t 1989), and thus “a non-party to a contract generally lacks standing to enforce that agreement,” *Ancile Inv. Co. v. Archer Daniels Midland Co.*, 784 F. Supp. 2d 296, 303 (S.D.N.Y. 2011) (citing *Consol. Edison, Inc. v. Northeast Utils.*, 426 F.3d 524, 527 (2d Cir. 2005)). Because Plaintiffs are not parties to the NYSHIP Contract, they cannot enforce its terms.

Plaintiffs alternatively argue that they have a “direct contractual relationship” with Carelon as “insurer and insured.” Compl. ¶¶ 270, 278. But that alternative argument fails because Carelon is not Plaintiffs’ insurer.<sup>2</sup> Rather, the NYSHIP “Empire Plan”—the “Preferred Provider Organization” plan for which Carelon administers mental health and substance use benefits, *id.* ¶¶ 23, 131—is “self-insured,” as the plan’s literature makes clear. NYSHIP, *Health Insurance Choices for 2025* at 6. Unlike an “insured plan” that purchases insurance for its participants, *see Metro. Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 732 (1985), a self-insured plan pays the costs of its own health care claims, but it frequently contracts with a third-party administrator for “claims-handling: processing, review, and payment,” *Liberty Mut. Ins. Co. v. Donegan*, 746 F.3d 497, 502 (2d Cir. 2014), *aff’d*, 577 U.S. 312 (2016).

That is what the New York State Department of Civil Service did here. It contracted with Carelon to “administer the Mental Health and Substance Use (MHSU) Disorder Program” for NYSHIP. NYSHIP Contract at 2; *see also* Compl. ¶¶ 23 (alleging Carelon “administers the Empire

---

<sup>2</sup> Nor is Carelon an insurer at all. *See infra*, Part III.

Plan Mental Health and Substance Use Program of the NYSHIP plan”); 131 (alleging the “mental health portion” of the NYSHIP “preferred provider organization” plan is administered by Carelton). Thus, Carelton is not Plaintiffs’ insurer, but is instead the third-party administrator of the health-benefits program of their NYSHIP health plan. And under New York law, insureds are not in contractual privity with claims administrators like Carelton. *See S.P. v. Dongbu Ins. Co.*, 174 A.D.3d 911, 914 (2d Dep’t 2019) (ordering dismissal of breach of contract claim against “claims administrator for the insurer” that did not issue the policy and was not in contractual privity with insured); *cf. Lipton v. Unumprovident Corp.*, 10 A.D.3d 703, 706 (2d Dep’t 2004) (affirming dismissal of breach of contract claim against employer and administrator of plan, as “it was not a party to the contract of insurance between participants” and insurer and thus administrator “owes no contractual duty to the plaintiff, and no breach of contract claim lies against it” for insurer’s failure to pay).

Plaintiffs’ contention that a “direct contractual relationship” exists between them and Carelton for purposes of their claims for breach of contract and for breach of the covenant of good faith and fair dealing thus fails as a matter of law. But even if such a contract did exist, Plaintiffs’ contract claims based on this “direct contractual relationship” would still fail. To plead a viable breach of contract claim, “a plaintiff must identify what provisions of the contract were breached as a result of the acts at issue.” *Ellington Credit Fund, Ltd. v. Select Portfolio Servicing, Inc.*, 837 F. Supp. 2d 162, 189 (S.D.N.Y. 2011). And a breach of the covenant of good faith and fair dealing must be based on “the reasonable expectations and inferences otherwise derived from the agreement.” *TVT Recs. & TVT Music, Inc. v. Island Def Jam Music Grp.*, 244 F. Supp. 2d 263, 278 (S.D.N.Y. 2003). Because Plaintiffs’ allegations do not identify any terms of this putative direct contract, let alone what provisions of that contract were purportedly breached in connection

with their allegations in this case, the Complaint fails to establish a breach of either the purported direct contract or any implied covenant.

**B. Plaintiffs Are Not Intended Third-Party Beneficiaries of the NYSHIP Contract**

Likely recognizing their complete lack of contractual privity with Carelon, Plaintiffs further contend they are “intended third-party beneficiaries” of the NYSHIP Contract because they are “state and municipal employees eligible to participate in the NYSHIP plan” and are “mentioned throughout the Contract.” Compl. ¶¶ 270, 272, 278. Those allegations are inadequate to establish that Plaintiffs are third-party beneficiaries that the parties intended to have the right to enforce the NYSHIP Contract’s terms.

“Proving third-party beneficiary status requires that the contract terms clearly evidence[ ] an intent to permit enforcement by the third party in question.” *Hillside Metro Assocs., LLC v. JPMorgan Chase Bank, Nat’l Ass’n*, 747 F.3d 44, 49 (2d Cir. 2014) (alteration in original, internal quotation marks omitted). Moreover, “[i]n the case of government contracts,” like here, “individual members of the public are treated as incidental beneficiaries unless a different intention is manifested.” *Id.* (internal quotation marks omitted).

Plaintiffs’ assertion of third-party beneficiary status fails because the NYSHIP Contract evidences the *opposite* intent: it expressly provides that there are “No Third-Party Beneficiaries” of the contract, and “[n]othing contained in the Contract, expressed or implied, is intended to confer upon any person or corporation, other than the Parties hereto and their successors in interest and assigns, any rights or remedies under or by reason of the Contract.” NYSHIP Contract at 69. New York law is clear that a “no third-party beneficiary” provision is enforceable unless the plaintiff identifies “an exception to its application,” or a “basis for rejecting the no third-party beneficiary provision,” *Fuisz v. 6 E. 72nd St. Corp.*, 222 A.D.3d 402, 404 (1st Dep’t 2023), such

as express provisions “granting plaintiffs enforceable rights,” *Diamond Castle Partners IV PRC, L.P. v. IAC/InterActivecorp*, 82 A.D.3d 421, 422 (1st Dep’t 2011). Thus, it is not enough for Plaintiffs to allege they are mentioned in the NYSHIP Contract, or even that the performance of the contract will redound to their benefit. Rather, Plaintiffs must demonstrate, for the specific provisions of the NYSHIP Contract on which they base their claims, that it is “clear from the language of the contract that there was an intent to permit enforcement by the third party.” *Dormitory Auth. v. Samson Constr. Co.*, 30 N.Y.3d 704, 710 (2018) (emphasis added). Because the NYSHIP Contract contains no such language contemplating enforcement by Plaintiffs and, indeed, makes clear that no such enforcement is intended, Plaintiffs cannot pursue their contract claims under a third-party beneficiary theory.<sup>3</sup>

## **II. PLAINTIFFS’ CLAIMS UNDER N.Y. GBL §§ 349 AND 350 MUST BE DISMISSED BECAUSE THE ALLEGED DECEPTIVE PRACTICE WAS FULLY DISCLOSED**

Plaintiffs’ third and fourth claims for violation of N.Y. GBL §§ 349 and 350 must be dismissed because the allegations of the Complaint establish that the allegedly “deceptive” practice—the inaccurate listing of in-network providers—is fully disclosed to the public through Carelon’s public provider directory.

---

<sup>3</sup> Even if Plaintiffs’ allegations were otherwise adequate to establish their contract claims, their claim for breach of the covenant of good faith and fair dealing would be subject to dismissal as redundant of their breach of contract claim. “[A] claim for breach of the covenant will be dismissed as redundant where the conduct allegedly violating the implied covenant is also the predicate for breach . . . of an express provision of the underlying contract.” *TVT Recs. & TVT Music, Inc. v. Island Def Jam Music Grp.*, 244 F. Supp. 2d 263, 277 (S.D.N.Y. 2003) (internal quotation marks omitted). “Such a claim may be maintained only if it is based on allegations different than those underlying the accompanying breach of contract claim.” *Id.* (internal quotation marks omitted). Because Plaintiffs’ claim for breach of the covenant of good faith and fair dealing is based on the same alleged conduct as their breach of contract claim—failure to maintain an accurate provider directory, Compl. ¶ 280—their good faith and fair dealing claim is “redundant” and should be dismissed. *See TVT Recs.*, 244 F. Supp. 2d at 277.

“To make out a prima facie case under Section 349, a plaintiff must demonstrate that (1) the defendant’s deceptive acts were directed at consumers, (2) the acts are misleading in a material way, and (3) the plaintiff has been injured as a result.” *Chufen Chen v. Dunkin’ Brands, Inc.*, 954 F.3d 492, 500 (2d Cir. 2020) (internal quotation marks omitted). “Deceptive acts are acts that are likely to mislead a reasonable consumer acting reasonably under the circumstances.” *Id.* (internal quotation marks omitted). GBL Section 350 claims are “analyzed under the same ‘reasonable consumer’ standard as Section 349.” *Id.* “Under either provision, [i]t is well settled that a court may determine as a matter of law that an allegedly deceptive advertisement would not have misled a reasonable consumer.” *Id.* (alteration in original, internal quotation marks omitted).

Importantly, “where the allegedly deceptive practice is fully disclosed, there is no deception claim.” *Mazella v. Coca-Cola Co.*, 548 F. Supp. 3d 349, 357 (S.D.N.Y. 2021) (citing *Broder v. MBNA Corp.*, 281 A.D.2d 369, 371 (1st Dep’t 2001)). And a purportedly deceptive “omission” is actionable only where the defendant “alone possesses material information that is relevant to the consumer and fails to provide this information.” *Pelman v. McDonald’s Corp.*, 237 F. Supp. 2d 512, 529 (S.D.N.Y. 2003).

Plaintiffs allege Carelon’s directory misrepresented its network by inaccurately listing in-network providers, and that Carelon thereby “omitted” the “true breadth” of the network. Compl. ¶¶ 290–90. As Plaintiffs concede, however, Carelon’s provider directory is “publicly available to members and non-members of the NYSHIP plan.” *Id.* ¶ 183. Thus, the crux of Plaintiffs’ claim of deception—that any given provider is listed in the directory but is either not in-network or has inaccurate information—can readily be assessed, evaluated or tested by any person accessing the directory. Indeed, Plaintiffs’ counsel, themselves non-members of the Plan, demonstrated they were able to access the Carelon provider directory and ascertain whether listed providers were in-

network and accurately listed in the directory. *See id.* ¶¶ 86–91; 105–110; 125–130. Nor was Carelon in exclusive control of the purportedly “omitted” information about whether a provider remained in-network or had changed its contact information, as such information was also available from any given provider. *See Pelman*, 237 F. Supp. 2d at 529.

Given those facts, the purported deceptive practice on which Plaintiffs base their N.Y. GBL §§ 349 and 350 claims was, in fact, fully disclosed. Under those circumstances, the listing of a provider in Carelon’s directory would not have “misled a reasonable consumer,” *Chufen Chen*, 954 F.3d at 500, thus requiring dismissal of the claims, *see Mazella*, 548 F. Supp. 3d at 357.

### **III. PLAINTIFFS’ CLAIM UNDER INSURANCE LAW § 4226 MUST BE DISMISSED BECAUSE CARELON IS NOT AN INSURER**

Plaintiffs’ fifth claim under Insurance Law § 4226 must be dismissed because that statute, by its plain terms, applies only to “insurers,” and Carelon is not an insurer under New York law. As the statute makes clear, its prohibitions extend only to those authorized to do business in insurance in the state: “[n]o insurer authorized to do in this state the business of life, or accident and health insurance, or to make annuity contracts shall” engage in certain proscribed conduct. N.Y. Ins. Law § 4226(a). Although Plaintiffs allege Carelon is “authorized to provide health insurance in New York,” Compl. ¶ 311, that allegation is untrue.

As discussed above, in addition to the allegations of the Complaint, the Court may consider various other sources of information, including matters that are appropriately subject to judicial notice under Fed. R. Evid 201. *See Kramer*, 937 F.2d at 773. Furthermore, the Court “need not accept as true any allegations that are contradicted by documents deemed to be part of the complaint, or materials amenable to judicial notice.” *In re MBIA, Inc., Sec. Litig.*, 700 F. Supp. 2d 566, 576 (S.D.N.Y. 2010). Courts routinely take judicial notice of the records of government agencies, including state agencies. *See Simeone v. T. Marzetti Co.*, No. 21-CV-9111 (KMK), 2023

WL 2665444, at \*1 (S.D.N.Y. Mar. 28, 2023) (“Courts may take judicial notice of public documents or documents of public record in addition to records of administrative bodies, such as government agencies like the FDA.” (internal quotation marks omitted)); *see, e.g., Fernandez v. Zoni Language Ctrs., Inc.*, No. 15-CV-6066 (PKC), 2016 WL 2903274, at \*3 (S.D.N.Y. May 18, 2016), *aff’d*, 858 F.3d 45 (2d Cir. 2017) (“[T]he Court takes judicial notice of the fact that the Zoni Language Learning Centers at issue here were certified by and registered with the New York State Department of Education as ESL schools.”).

Plaintiffs’ allegation that Carelon is “authorized to provide health insurance in New York,” is contradicted by the records of the New York Department of Financial Services, which regulates and licenses companies to write insurance in the state. N.Y. Ins. Law § 1102 (explaining superintendent’s authority to license insurers); § 107 (defining superintendent as the superintendent of financial services). The Department of Financial Services maintains a database of “the most current information maintained by the Department” of companies licensed to write insurance.<sup>4</sup> That database does not list Carelon as a licensed insurer in the state, because it is not licensed as an insurer by the State of New York. *See* Declaration of Matthew J. Aaronson, dated August 29, 2025, ¶¶ 4–7 & Ex. B, C. The Court thus need not accept as true Plaintiffs’ allegation that Carelon is so authorized, as it is contradicted by the authoritative records of the Department of Financial Services.

---

<sup>4</sup> Department of Financial Services, Insurance Company Search, [https://www.dfs.ny.gov/apps\\_and\\_licensing/insurance\\_companies/search](https://www.dfs.ny.gov/apps_and_licensing/insurance_companies/search) (last visited Aug. 28, 2025).

Because Carelon is not an “insurer authorized to do in this state the business of life, or accident and health insurance, or to make annuity contracts,” N.Y. Ins. Law § 4226 does not apply to Carelon, and Plaintiffs’ fifth claim must be dismissed with prejudice.<sup>5</sup>

**IV. PLAINTIFFS’ CLAIM FOR FRAUDULENT MISREPRESENTATION MUST BE DISMISSED BECAUSE THEY DO NOT ALLEGE FACTS SHOWING REASONABLE RELIANCE OR A DUTY TO DISCLOSE**

Plaintiffs’ sixth claim for fraudulent misrepresentation must be dismissed because Plaintiffs have not alleged facts showing actual reliance on the purported misrepresentations, and they also have not alleged the existence of a fiduciary or other relationship upon which liability for a fraudulent omission could be founded.

The elements of a fraud are: “a misrepresentation or a material omission of fact which was false and known to be false by defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury.” *Tsinias Enters. Ltd. v. Taza Grocery, Inc.*, 172 A.D.3d 1271, 1272 (2d Dep’t 2019) (internal quotation marks omitted). A fraudulent omission is actionable only where there is a duty to disclose material information, such as a fiduciary duty owed to the plaintiff. *See Mandarin Trading Ltd. v. Wildenstein*, 16 N.Y.3d 173, 179 (2011).

Plaintiffs’ fraudulent misrepresentation claim fails because Plaintiffs’ do not plead facts that plausibly establish reasonable reliance. Plaintiffs repeatedly allege that the purpose and effect of Carelon’s alleged misrepresentations was to induce them to enroll in the NYSHIP Empire plan for which Carelon administered mental health benefits. Compl. ¶¶ 239, 292, 295, 305, 308, 322, 324, 327. Plaintiffs do not allege any other act or forbearance that was induced by or taken in

---

<sup>5</sup> Carelon need not be authorized to write insurance in the state because, as discussed above, it is not the insurer under the NYSHIP/Empire plan, and instead acts only as the claims administrator.

reliance on Carelon's purportedly inaccurate provider directory. But Plaintiffs' assertions of reliance fail because they do not "actually plead facts that underlie this reliance." *Granite Partners, L.P. v. Bear, Stearns & Co.*, 58 F. Supp. 2d 228, 258 (S.D.N.Y. 1999). Plaintiffs have not "allege[d] with any particularity" that, prior to making their "enrollment decisions" that were purportedly induced by Carelon's provider directory, Compl. ¶¶ 239, 313, they "actually read or saw" the provider directory, *Fero v. Excellus Health Plan, Inc.*, 236 F. Supp. 3d 735, 772 (W.D.N.Y. 2017); *DeBlasio v. Merrill Lynch & Co.*, No. 07CIV318(RJS), 2009 WL 2242605, at \*24 n.15 (S.D.N.Y. July 27, 2009) (rejecting conclusory allegation plaintiffs "justifiably relied" on representations absent specific allegations they "actually read and relied on" defendants' advertisements and statements); *Tuosto v. Philip Morris USA Inc.*, No. 05CIV.9384(PKL), 2007 WL 2398507, at \*9 (S.D.N.Y. Aug. 21, 2007) (failure to allege plaintiffs saw advertisement does not establish reliance).

Plaintiffs' claim for fraudulent misrepresentation also fails to the extent it is based on any purported fraudulent "omission." Plaintiffs do not allege they had a fiduciary relationship with Carelon or that Carelon owed them fiduciary duties. Nor have Plaintiffs alleged any other basis on which the Court could find a duty to disclose. *See Banque Arabe et Internationale D'Investissement v. Maryland Nat'l Bank*, 57 F.3d 146, 155 (2d Cir. 1995). Accordingly, Plaintiffs' fraudulent misrepresentation claim must be dismissed for this reason as it relates to claimed fraudulent omissions.

Because Plaintiffs have not pleaded facts to show reasonable reliance on the purported misrepresentations, or that Carelon had any duty to disclose any purported omission, Plaintiffs' sixth claim must be dismissed.

**V. PLAINTIFFS' CLAIM FOR NEGLIGENT MISREPRESENTATION MUST BE DISMISSED BECAUSE THEY HAVE NOT ALLEGED A SPECIAL RELATIONSHIP OR ACTUAL RELIANCE**

Plaintiffs' seventh claim for negligent misrepresentation must be dismissed because Plaintiffs: (1) have not alleged a special or privity-like relationship between them and Carelon that would impose a duty on Carelon with respect to the allegedly incorrect information; and (2) have not alleged facts that show reasonable reliance on any purported misrepresentation.

To state a claim for negligent misrepresentation, the plaintiff is required to demonstrate: “(1) the existence of a special or privity-like relationship imposing a duty on the defendant to impart correct information to the plaintiff; (2) that the information was incorrect; and (3) reasonable reliance on the information.” *Ginsburg Dev. Cos. v. Carbone*, 134 A.D.3d 890, 894 (2d Dep’t 2015). Plaintiffs’ allegations fail to establish the first or third elements.

**A. There Is No “Special Relationship” Between Plaintiffs and Carelon**

The threshold showing of a negligent misrepresentation claim is the existence of a “special relationship” between the plaintiff and defendant. *See id.* “[A] special relationship requires a closer degree of trust than an ordinary business relationship.” *Fleet Bank v. Pine Knoll Corp.*, 290 A.D.2d 792, 795 (3d Dep’t 2002) (internal quotation marks omitted). Thus, generally no “special relationship of trust or confidence” arises from commercial contracts, such as loan agreements, *id.* at 796, or insurance contracts, *Fero*, 236 F. Supp. 3d at 773.

Here, as discussed above, *supra* Part I, Plaintiffs have no privity at all with Carelon, as they have no direct contractual relationship with Carelon as the claims administrator, rather than insurer, under the Plan. And Plaintiffs do not allege any other relationship with Carelon that could establish a “special relationship” that would support a negligent misrepresentation claim. Indeed, if no special relationship exists even between an insurer and an insured under New York law, then plainly there is no such relationship between an insured and a plan administrator. Accordingly,

Plaintiffs' Complaint fails to establish the first element of a negligent misrepresentation claim.

**B. Plaintiffs Do Not Plead Reasonable Reliance**

As discussed above, *supra* part V(a), Plaintiffs have not pleaded facts to show reasonable reliance on Carelon's purported misrepresentations. Accordingly, for the same reason, Plaintiffs have failed to establish reasonable reliance for their fraudulent misrepresentation claim, they likewise fail to establish that further element of their negligent misrepresentation claim.

**VI. PLAINTIFFS' CLAIM FOR UNJUST ENRICHMENT MUST BE DISMISSED BECAUSE PLAINTIFFS HAVE CONFERRED NO BENEFIT ON CARELON, AND BECAUSE IT IS DUPLICATIVE OF PLAINTIFFS' LEGAL CLAIMS**

Last, Plaintiffs' eighth claim for unjust enrichment must be dismissed because Plaintiffs' allegations fail to demonstrate they conferred a specific and direct benefit on Carelon. "To prevail on a claim for unjust enrichment in New York, a plaintiff must establish: 1) that the defendant benefitted; 2) at the plaintiff's expense; and 3) that 'equity and good conscience' require restitution." *Kaye v. Grossman*, 202 F.3d 611, 616 (2d Cir. 2000). However, "[a]n unjust enrichment claim is not available where it simply duplicates, or replaces, a conventional contract or tort claim." *Ferdous v. Hasan*, 236 A.D.3d 992, 994 (2d Dep't 2025).

**A. Plaintiffs Conferred No Specific and Direct Benefit on Carelon**

Plaintiffs' allegations fail to establish they conferred a benefit on Carelon that would support their unjust enrichment claim.

The defendant's receipt of a "specific and direct benefit [is] necessary to support an unjust enrichment claim." *Kaye*, 202 F.3d at 616. "The 'essence' of such a claim 'is that one party has received money or a benefit at the expense of another.'" *Id.* (citation omitted). "Notably, in order to state an unjust enrichment claim, a plaintiff must show that the defendant actually received a benefit." *Regnante v. Sec. & Exch. Offs.*, 134 F. Supp. 3d 749, 772 (S.D.N.Y. 2015); "A complaint does not state a cause of action in unjust enrichment if it fails to allege that defendant received

something of value which belongs to the plaintiff.” *Chevron Corp. v. Donziger*, 871 F. Supp. 2d 229, 260 (S.D.N.Y. 2012).

Plaintiffs contend they conferred a benefit on Carelon by “enrolling in its health insurance plan,” which they allege “directed” the premiums they paid for their insurance coverage to Carelon. Compl. ¶ 339. But Carelon is not Plaintiffs’ insurer, as discussed above, *supra* Part I(a), and as each of the Plaintiffs concede, they pay their premiums to NYSHIP, not Carelon. Compl. ¶¶ 84, 104, 122. And while Plaintiffs allege that a “portion of members’ premiums are paid to Carelon,” *id.* ¶ 244, Plaintiffs do not allege that this payment to Carelon results from or changes with member enrollment or has any relationship to the specific content of the published provider directory. Stated differently, there is no allegation that the purported benefit Plaintiffs conferred—enrolling in the plan for which Carelon administers mental health services—actually resulted in Carelon’s receipt of money or another benefit at Plaintiffs’ expense. That failure to allege a Carelon’s receipt of a “specific and direct benefit” from Plaintiffs is fatal to Plaintiffs’ unjust enrichment claim.

**B. Plaintiffs’ Unjust Enrichment Claim Is Duplicative of Their Other Claims**

Plaintiffs’ unjust enrichment claim also must be dismissed because it is duplicative of Plaintiffs’ other legal claims, including their contract, tort, and statutory claims. “[T]he theory of unjust enrichment lies as a quasi-contract claim. It is an obligation the law creates in the absence of any agreement.” *Ferdous*, 236 A.D.3d at 994. Such an equitable claim is available only when there is no adequate remedy at law for the alleged harm. *See Samiento v. World Yacht Inc.*, 10 N.Y.3d 70, 81 (2008). Thus, where an unjust enrichment claim “ar[ises] from the same facts and d[oes] not allege distinct and different damages” from other causes of action alleged, it is properly dismissed. *See Town of Wallkill v. Rosenstein*, 40 A.D.3d 972, 974 (2d Dep’t 2007). And the dismissal of the causes of action for which unjust enrichment is duplicative does not cure this deficiency or preclude dismissal of the unjust enrichment claim. *See Ferdous*, 236 A.D.3d at 994





UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

JANE DOE as mother of MINOR DOE,  
HANNAH LANDERER, and STEVEN  
MARKS, on behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

CARELON BEHAVIORAL HEALTH, INC.

Defendant.

Civil Action No. 1:25-cv-03489

**DEFENDANT CARELON BEHAVIORAL HEALTH, INC.'S  
MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS**

Matthew J. Aaronson  
TROUTMAN PEPPER LOCKE LLP  
875 Third Avenue  
New York, NY 10022  
T: (212) 704-6000  
matthew.aaronson@troutman.com

*Attorneys for Defendant  
Carelon Behavioral Health, Inc.*

Date: August 29, 2025  
New York, New York

**TABLE OF CONTENTS**

INTRODUCTION ..... 1

FACTUAL ALLEGATIONS ..... 4

LEGAL STANDARD..... 5

ARGUMENT ..... 6

I. PLAINTIFFS’ CONTRACT CLAIMS MUST BE DISMISSED BECAUSE THE ALLEGATIONS DO NOT ESTABLISH THE EXISTENCE OF ANY CONTRACT ENFORCEABLE BY PLAINTIFFS ..... 6

A. There Is No Contractual Privity Between Plaintiffs and Carelon..... 6

B. Plaintiffs Are Not Intended Third-Party Beneficiaries of the NYSHIP Contract..... 9

II. PLAINTIFFS’ CLAIMS UNDER N.Y. GBL §§ 349 AND 350 MUST BE DISMISSED BECAUSE THE ALLEGED DECEPTIVE PRACTICE WAS FULLY DISCLOSED..... 10

III. PLAINTIFFS’ CLAIM UNDER INSURANCE LAW § 4226 MUST BE DISMISSED BECAUSE CARELON IS NOT AN INSURER..... 12

IV. PLAINTIFFS’ CLAIM FOR FRAUDULENT MISREPRESENTATION MUST BE DISMISSED BECAUSE THEY DO NOT ALLEGE FACTS SHOWING REASONABLE RELIANCE OR A DUTY TO DISCLOSE ..... 14

V. PLAINTIFFS’ CLAIM FOR NEGLIGENT MISREPRESENTATION MUST BE DISMISSED BECAUSE THEY HAVE NOT ALLEGED A SPECIAL RELATIONSHIP OR ACTUAL RELIANCE ..... 16

A. There Is No “Special Relationship” Between Plaintiffs and Carelon..... 16

B. Plaintiffs Do Not Plead Reasonable Reliance..... 17

VI. PLAINTIFFS’ CLAIM FOR UNJUST ENRICHMENT MUST BE DISMISSED BECAUSE PLAINTIFFS HAVE CONFERRED NO BENEFIT ON CARELON, AND BECAUSE IT IS DUPLICATIVE OF PLAINTIFFS’ LEGAL CLAIMS ..... 17

A. Plaintiffs Conferred No Specific and Direct Benefit on Carelon ..... 17

B. Plaintiffs’ Unjust Enrichment Claim Is Duplicative of Their Other Claims ..... 18

CONCLUSION..... 19

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>Ancile Inv. Co. v. Archer Daniels Midland Co.</i> , 784 F. Supp. 2d 296 (S.D.N.Y. 2011).....	7
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	5
<i>Banque Arabe et Internationale D’Investissement v. Maryland Nat’l Bank</i> , 57 F.3d 146 (2d Cir. 1995).....	15
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007).....	5
<i>Broder v. MBNA Corp.</i> , 281 A.D.2d 369 (1st Dep’t 2001) .....	11
<i>Carlin v. Davidson Fink LLP</i> , 852 F.3d 207 (2d Cir. 2017).....	5
<i>Chambers v. Time Warner, Inc.</i> , 282 F.3d 147 (2d Cir. 2002).....	4, 5
<i>Chevron Corp. v. Donziger</i> , 871 F. Supp. 2d 229 (S.D.N.Y. 2012).....	18
<i>Chufen Chen v. Dunkin’ Brands, Inc.</i> , 954 F.3d 492 (2d Cir. 2020).....	11, 12
<i>Consol. Edison, Inc. v. Northeast Utils.</i> , 426 F.3d 524 (2d Cir. 2005).....	7
<i>DeBlasio v. Merrill Lynch &amp; Co.</i> , No. 07CIV318(RJS), 2009 WL 2242605 (S.D.N.Y. July 27, 2009) .....	15
<i>DeFlora Lake Dev. Assocs., Inc. v. Hyde Park</i> , 654 F. App’x 9 (2d Cir. 2016) .....	6
<i>Demand Elec., Inc. v. Innovative Tech. Holdings, LLC</i> , 665 F. Supp. 3d 498 (S.D.N.Y. 2023).....	6
<i>Diamond Castle Partners IV PRC, L.P. v. IAC/InterActivecorp</i> , 82 A.D.3d 421 (1st Dep’t 2011) .....	10

*Dormitory Auth. v. Samson Constr. Co.*,  
30 N.Y.3d 704 (2018) .....10

*Ellington Credit Fund, Ltd. v. Select Portfolio Servicing, Inc.*,  
837 F. Supp. 2d 162 (S.D.N.Y. 2011).....8

*Fasolino Foods Co. v. Banca Nazionale del Lavoro*,  
961 F.2d 1052 (2d Cir. 1992).....6

*Ferdous v. Hasan*,  
236 A.D.3d 992 (2d Dep’t 2025) .....17, 18, 19

*Fernandez v. Zoni Language Ctrs., Inc.*,  
No. 15-CV-6066 (PKC), 2016 WL 2903274 (S.D.N.Y. May 18, 2016), *aff’d*,  
858 F.3d 45 (2d Cir. 2017).....13

*Fero v. Excellus Health Plan, Inc.*,  
236 F. Supp. 3d 735 (W.D.N.Y. 2017) .....15, 16

*Fleet Bank v. Pine Knoll Corp.*,  
290 A.D.2d 792 (3d Dep’t 2002) .....16

*Fuisz v. 6 E. 72nd St. Corp.*,  
222 A.D.3d 402 (1st Dep’t 2023) .....10

*Garrett v. Music Publ’g Co. of America, LLC*,  
740 F. Supp. 2d 457 (S.D.N.Y. 2010).....6

*Ginsburg Dev. Cos. v. Carbone*,  
134 A.D.3d 890 (2d Dep’t 2015) .....16

*Granite Partners, L.P. v. Bear, Stearns & Co.*,  
58 F. Supp. 2d 228 (S.D.N.Y. 1999).....15

*Guzman v. Ramos*,  
191 A.D.3d 644 (2d Dep’t 2021) .....6

*Hillside Metro Assocs., LLC v. JPMorgan Chase Bank, Nat’l Ass’n*,  
747 F.3d 44 (2d Cir. 2014).....9

*Kaye v. Grossman*,  
202 F.3d 611 (2d Cir. 2000).....17

*Kramer v. Time Warner Inc.*,  
937 F.2d 767 (2d Cir. 1991).....5, 12

*Liberty Mut. Ins. Co. v. Donegan*,  
746 F.3d 497 (2d Cir. 2014), *aff’d*, 577 U.S. 312 (2016) .....7

*Lipton v. Unumprovident Corp.*,  
10 A.D.3d 703 (2d Dep’t 2004) .....8

*Mandarin Trading Ltd. v. Wildenstein*,  
16 N.Y.3d 173 (2011) .....14

*Mazella v. Coca-Cola Co.*,  
548 F. Supp. 3d 349 (S.D.N.Y. 2021).....11, 12

*In re MBIA, Inc., Sec. Litig.*,  
700 F. Supp. 2d 566 (S.D.N.Y. 2010).....12

*Metro. Life Ins. Co. v. Massachusetts*,  
471 U.S. 724 (1985).....7

*Pelman v. McDonald’s Corp.*,  
237 F. Supp. 2d 512 (S.D.N.Y. 2003).....11, 12

*Perma Pave Contracting Corp. v. Paerdegat Boat & Racquet Club, Inc.*,  
156 A.D.2d 550 (2d Dep’t 1989) .....7

*Regnante v. Sec. & Exch. Offs.*,  
134 F. Supp. 3d 749 (S.D.N.Y. 2015).....18

*S.P. v. Dongbu Ins. Co.*,  
174 A.D.3d 911 (2d Dep’t 2019) .....8

*Samiento v. World Yacht Inc.*,  
10 N.Y.3d 70 (2008) .....18

*Simeone v. T. Marzetti Co.*,  
No. 21-CV-9111 (KMK), 2023 WL 2665444 (S.D.N.Y. Mar. 28, 2023) .....13

*Smith v. Local 819 I.B.T. Pension Plan*,  
291 F.3d 236 (2d Cir. 2002).....5

*Town of Wallkill v. Rosenstein*,  
40 A.D.3d 972 (2d Dep’t 2007) .....19

*Tsinias Enters. Ltd. v. Taza Grocery, Inc.*,  
172 A.D.3d 1271 (2d Dep’t 2019) .....14

*Tuosto v. Philip Morris USA Inc.*,  
No. 05CIV.9384(PKL), 2007 WL 2398507 (S.D.N.Y. Aug. 21, 2007).....15

*TVT Recs. & TVT Music, Inc. v. Island Def Jam Music Grp.*,  
244 F. Supp. 2d 263 (S.D.N.Y. 2003).....8, 10

**Statutes**

N.Y. Gen. Bus. Law § 349.....1, 2, 4, 10, 11, 12  
N.Y. Gen. Bus. Law § 350.....1, 2, 4, 10, 11, 12  
N.Y. Ins. Law § 1102.....13  
N.Y. Ins. Law § 4226.....1, 2, 3, 4, 12, 14

**Other Authorities**

Fed. R. Civ. P. 12.....1, 5  
Fed. R. Evid. 201 .....5, 12

Defendant Carelon Behavioral Health, Inc. (“Carelon”), through its undersigned counsel, submits this Memorandum of Law in Support of its Motion to Dismiss the Complaint (ECF No. 1) (“Complaint” or “Compl.”) filed by “Jane Doe” on behalf of her minor child “Minor Doe,” Hannah Landerer, and Steven Marks (collectively, “Plaintiffs”) pursuant to Fed. R. Civ. P. 12(b)(6).

### **INTRODUCTION**

Plaintiffs are employees of the State of New York and enrollees in the New York State Health Insurance Program (“NYSHIP”), which is a health insurance plan operated by New York for the benefit of state employees, retirees, and their dependents. NYSHIP offers a “Preferred Provider Organization” plan, for which Carelon administers mental health benefits. Carelon has administered the plan under a written contract with the New York State Department of Civil Service since 2016.

The gravamen of Plaintiffs’ complaint is their allegation that Carelon’s directory of participating, or “in-network,” providers contains inaccurate information about the listed mental-health providers. Plaintiffs contend these alleged inaccuracies render the Plan’s materials “deceptive,” and assert they were unable to identify in-network providers, resulting in damages due to delaying treatment and/or incurring out-of-pocket costs to see out-of-network providers.

Based on these allegations, Plaintiffs assert eight state-law claims on behalf of themselves and a putative class: (1) breach of contract; (2) breach of the covenant of good faith and fair dealing; (3) violation of N.Y. Gen. Bus. Law (“GBL”) § 349; (4) violation of N.Y. GBL § 350; (5) violation of N.Y. Ins. Law § 4226; (6) fraudulent misrepresentation; (7) negligent misrepresentation; and (8) unjust enrichment.

Carelon disputes the factual allegations of the Complaint and denies that its provider directory is inaccurate or in any way “deceptive.” However, even if Plaintiffs’ allegations are accepted as true—and they are not—the Complaint would be subject to dismissal because each of Plaintiffs’ claims is legally deficient, as pleaded.

Plaintiffs’ first two claims for breach of contract and breach of the covenant of good faith and fair dealing must be dismissed because no contractual privity exists between Plaintiffs and Carelon. Carelon is contracted with the State of New York, not Plaintiffs, and Plaintiffs are not intended beneficiaries of that contract. Nor is Carelon Plaintiffs’ insurer, such that a contractual relationship could be implied or imputed between the parties, as Plaintiffs suggest. As the existence of an enforceable contract is an element of both contract-based claims, Plaintiffs’ first two causes of action must be dismissed.

Plaintiffs’ next two claims under New York’s deceptive practices and deceptive advertising laws must be dismissed because the purportedly deceptive information—the allegedly inaccurate listing of contracted providers—was and remains fully disclosed. Any member of the public can access the provider directory and determine, before signing up for a plan or receiving any services under the plan, whether any given provider is in network or accepting patients, as the allegations of the Complaint clearly demonstrate. Because neither N.Y. GBL § 349 nor § 350 provide a cause of action where the purportedly deceptive conduct is fully disclosed, Plaintiffs’ third and fourth causes of action must be dismissed.

Plaintiffs’ fifth claim under New York Insurance Law § 4226 must be dismissed because it does not apply to Carelon. That section regulates the conduct of insurers authorized to do the business of insurance, including health insurance, in the state of New York. Carelon is not engaged in the business of health insurance in New York and is not authorized by the State to do so.

Accordingly, New York Insurance Law § 4226 does not apply to Carelon, and this cause of action must be dismissed.

Plaintiffs' sixth and seventh claims for fraudulent and negligent misrepresentation must be dismissed because Plaintiffs have failed to plead facts showing reasonable reliance on any purported misrepresentation in selecting the health plan at issue. They have likewise failed to plead the existence of either a special relationship or other duty to disclose that would render any alleged omission actionable. Because justifiable and reasonable reliance is a required element to establish any claim based on a fraudulent representation, and a duty to disclose is a required element of any claim based on a fraudulent omission, Plaintiffs' causes of action based on alleged misrepresentations and omissions must be dismissed.

Finally, Plaintiffs' eighth claim for unjust enrichment must be dismissed because: (1) Plaintiffs do not plead that they conferred and Carelon received a benefit as a result of Plaintiffs' conduct that unjustly "enriched" Carelon, and (2) Plaintiffs' alleged equitable claim is impermissibly duplicative with other relief Plaintiffs have sought or could seek. The Complaint contains no facts showing that Plaintiffs' selection of the health plan at issue resulted in increased or additional payments to Carelon or directly conferred any other benefit on Carelon. The lack of such a direct benefit is fatal to an unjust enrichment claim. And unjust enrichment, as an equitable claim, is unavailable where it is based on facts and conducts that could be pleaded as contract, tort, or statutory claims, which Plaintiffs also have pleaded here. Because Plaintiffs' unjust enrichment claim arises from the same facts, circumstances, and purported damages as their other claims, the unjust enrichment cause of action must be dismissed.

For these reasons, as discussed more fully herein, each of Plaintiffs' causes of action must be dismissed with prejudice for failure to state a claim.

### **FACTUAL ALLEGATIONS**

The State of New York, through its Department of Civil Service, operates NYSHIP to provide health insurance to state employees, retirees, and eligible dependents. ECF Doc. 1-1 [hereinafter “NYSHIP Contract”] at 2. Eligible employees may choose an HMO plan, or a preferred provider organization (PPO) plan, called the “Empire Plan” (the “Plan”), the mental health portion of which is administered by Carelon. Compl. ¶¶ 23, 131; NYSHIP, *Health Insurance Choices for 2025*, at 6.<sup>1</sup>

Plaintiffs are each enrollees in the Plan. Compl. ¶¶ 20–22. Plaintiffs allege Carelon’s directory of providers in its network contains inaccurate information regarding mental health providers, including by listing providers that are not, in fact, in-network, and by listing inaccurate information for those who are. *See, e.g.*, Compl. ¶¶ 1–3, 10, 186–90. Plaintiffs allege this renders the Plan materials “deceptive.” *Id.* ¶¶ 10, 212–23. Plaintiffs assert those alleged inaccuracies caused them damage by delaying treatment and/or incurring the costs of using out-of-network providers. *See, e.g., id.* ¶¶ 3–4, 13–14, 254.

As noted above, based on those allegations, Plaintiffs assert claims for: (1) breach of contract; (2) breach of the covenant of good faith and fair dealing; (3) violation of N.Y. GBL § 349; (4) violation of N.Y. GBL § 350; (5) violation of N.Y. Ins. Law § 4226; (6) fraudulent misrepresentation; (7) negligent misrepresentation; and (8) unjust enrichment. Compl. ¶¶ 268–345.

---

<sup>1</sup> <https://www.cs.ny.gov/employee-benefits/nyship/shared/publications/choices/2025/active-choices-2025.pdf>. Plaintiffs rely on this document as the factual basis for the allegations contained in Paragraph 134 of the Complaint, and the Court accordingly may consider this document in addressing this Motion. *See Chambers v. Time Warner, Inc.*, 282 F.3d 147, 153 (2d Cir. 2002).

### **LEGAL STANDARD**

Each of Plaintiffs' claims is subject to dismissal pursuant to Rule 12(b)(6), as the allegations of the Complaint fail to state a plausible claim for which Plaintiffs are entitled to relief. On a motion to dismiss for failure to state a claim under Rule 12(b)(6), the Court assumes the truth of the factual allegations of the complaint and draws all reasonable inferences in favor of the plaintiff. *See Smith v. Local 819 I.B.T. Pension Plan*, 291 F.3d 236, 240 (2d Cir. 2002). However, "a plaintiff's obligation to provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations and quotations omitted). Thus, the Court is not required to assume the truth of "legal conclusions," or "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Although the Court is generally "confined to the allegations contained within the four corners of [the] complaint" in deciding a Rule 12(b)(6) motion, the Court "may also consider any documents attached to the complaint as an exhibit or incorporated in it by reference," *Carlin v. Davidson Fink LLP*, 852 F.3d 207, 212 (2d Cir. 2017) (alteration in original, internal quotation marks omitted), "matters of which judicial notice may be taken under Fed.R.Evid. 201," *Kramer v. Time Warner Inc.*, 937 F.2d 767, 773 (2d Cir. 1991), or documents the plaintiff relied on in drafting the complaint, *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 153 (2d Cir. 2002).

## ARGUMENT

### **I. PLAINTIFFS’ CONTRACT CLAIMS MUST BE DISMISSED BECAUSE THE ALLEGATIONS DO NOT ESTABLISH THE EXISTENCE OF ANY CONTRACT ENFORCEABLE BY PLAINTIFFS**

Plaintiffs’ first claims for breach of contract and for breach of the covenant of good faith and fair dealing must be dismissed because Plaintiffs’ allegations fail to establish the existence of an enforceable contract between the parties; an essential element of both claims.

“Under New York law, a claim for breach of contract requires: (i) the existence of an enforceable agreement; (ii) adequate performance of the contract by the plaintiff; (iii) a breach of that agreement by the defendant; and (iv) damages resulting from the breach.” *Demand Elec., Inc. v. Innovative Tech. Holdings, LLC*, 665 F. Supp. 3d 498, 504 (S.D.N.Y. 2023) (citing *DeFlora Lake Dev. Assocs., Inc. v. Hyde Park*, 654 F. App’x 9, 10 (2d Cir. 2016)); *Guzman v. Ramos*, 191 A.D.3d 644, 646 (2d Dep’t 2021)). A breach of the covenant of good faith and fair dealing also is “merely a breach of the underlying contract.” *Fasolino Foods Co. v. Banca Nazionale del Lavoro*, 961 F.2d 1052, 1056 (2d Cir. 1992). Thus, “[t]here can be no breach of contract, or the implied covenant of good faith and fair dealing, without a governing valid contract.” *Garrett v. Music Publ’g Co. of America, LLC*, 740 F. Supp. 2d 457, 463 (S.D.N.Y. 2010).

#### **A. There Is No Contractual Privity Between Plaintiffs and Carelon**

Plaintiffs’ breach of contract claim is premised on the allegation that Carelon’s “failure to maintain an accurate directory of in-network providers” constitutes a “breach of the contract between [Carelon] and New York State,” *i.e.*, the NYSHIP Contract. Compl. ¶¶ 271, 273–74. But as Plaintiffs concede, that contract “exists between New York State and Carelon,” *id.* ¶ 269, and Plaintiffs are not parties to it. Indeed, the NYSHIP Contract, the agreement that Plaintiffs contend “obligates Carelon to provide an adequate network,” is attached to the Complaint as Exhibit A. *Id.*

¶ 171. The only parties—and only signatories—to that agreement are the New York State Department of Civil Service and Carelon. NYSHIP Contract at 2, 56.

Under New York law, it is “well settled” that a plaintiff “may not assert a cause of action to recover damages for breach of contract against a party with whom it is not in privity,” *Perma Pave Contracting Corp. v. Paerdegat Boat & Racquet Club, Inc.*, 156 A.D.2d 550, 551 (2d Dep’t 1989), and thus “a non-party to a contract generally lacks standing to enforce that agreement,” *Ancile Inv. Co. v. Archer Daniels Midland Co.*, 784 F. Supp. 2d 296, 303 (S.D.N.Y. 2011) (citing *Consol. Edison, Inc. v. Northeast Utils.*, 426 F.3d 524, 527 (2d Cir. 2005)). Because Plaintiffs are not parties to the NYSHIP Contract, they cannot enforce its terms.

Plaintiffs alternatively argue that they have a “direct contractual relationship” with Carelon as “insurer and insured.” Compl. ¶¶ 270, 278. But that alternative argument fails because Carelon is *not* Plaintiffs’ insurer.<sup>2</sup> Rather, the NYSHIP “Empire Plan”—the “Preferred Provider Organization” plan for which Carelon administers mental health and substance use benefits, *id.* ¶¶ 23, 131—is “self-insured,” as the plan’s literature makes clear. NYSHIP, *Health Insurance Choices for 2025* at 6. Unlike an “insured plan” that purchases insurance for its participants, *see Metro. Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 732 (1985), a self-insured plan pays the costs of its own health care claims, but it frequently contracts with a third-party administrator for “claims-handling: processing, review, and payment,” *Liberty Mut. Ins. Co. v. Donegan*, 746 F.3d 497, 502 (2d Cir. 2014), *aff’d*, 577 U.S. 312 (2016).

That is what the New York State Department of Civil Service did here. It contracted with Carelon to “administer the Mental Health and Substance Use (MHSU) Disorder Program” for NYSHIP. NYSHIP Contract at 2; *see also* Compl. ¶¶ 23 (alleging Carelon “administers the Empire

---

<sup>2</sup> Nor is Carelon an insurer at all. *See infra*, Part III.

Plan Mental Health and Substance Use Program of the NYSHIP plan”); 131 (alleging the “mental health portion” of the NYSHIP “preferred provider organization” plan is administered by Carelton). Thus, Carelton is not Plaintiffs’ insurer, but is instead the third-party administrator of the health-benefits program of their NYSHIP health plan. And under New York law, insureds are not in contractual privity with claims administrators like Carelton. *See S.P. v. Dongbu Ins. Co.*, 174 A.D.3d 911, 914 (2d Dep’t 2019) (ordering dismissal of breach of contract claim against “claims administrator for the insurer” that did not issue the policy and was not in contractual privity with insured); *cf. Lipton v. Unumprovident Corp.*, 10 A.D.3d 703, 706 (2d Dep’t 2004) (affirming dismissal of breach of contract claim against employer and administrator of plan, as “it was not a party to the contract of insurance between participants” and insurer and thus administrator “owes no contractual duty to the plaintiff, and no breach of contract claim lies against it” for insurer’s failure to pay).

Plaintiffs’ contention that a “direct contractual relationship” exists between them and Carelton for purposes of their claims for breach of contract and for breach of the covenant of good faith and fair dealing thus fails as a matter of law. But even if such a contract did exist, Plaintiffs’ contract claims based on this “direct contractual relationship” would still fail. To plead a viable breach of contract claim, “a plaintiff must identify what provisions of the contract were breached as a result of the acts at issue.” *Ellington Credit Fund, Ltd. v. Select Portfolio Servicing, Inc.*, 837 F. Supp. 2d 162, 189 (S.D.N.Y. 2011). And a breach of the covenant of good faith and fair dealing must be based on “the reasonable expectations and inferences otherwise derived from the agreement.” *TVT Recs. & TVT Music, Inc. v. Island Def Jam Music Grp.*, 244 F. Supp. 2d 263, 278 (S.D.N.Y. 2003). Because Plaintiffs’ allegations do not identify any terms of this putative direct contract, let alone what provisions of that contract were purportedly breached in connection

with their allegations in this case, the Complaint fails to establish a breach of either the purported direct contract or any implied covenant.

**B. Plaintiffs Are Not Intended Third-Party Beneficiaries of the NYSHIP Contract**

Likely recognizing their complete lack of contractual privity with Carelon, Plaintiffs further contend they are “intended third-party beneficiaries” of the NYSHIP Contract because they are “state and municipal employees eligible to participate in the NYSHIP plan” and are “mentioned throughout the Contract.” Compl. ¶¶ 270, 272, 278. Those allegations are inadequate to establish that Plaintiffs are third-party beneficiaries that the parties intended to have the right to enforce the NYSHIP Contract’s terms.

“Proving third-party beneficiary status requires that the contract terms clearly evidence[ ] an intent to permit enforcement by the third party in question.” *Hillside Metro Assocs., LLC v. JPMorgan Chase Bank, Nat’l Ass’n*, 747 F.3d 44, 49 (2d Cir. 2014) (alteration in original, internal quotation marks omitted). Moreover, “[i]n the case of government contracts,” like here, “individual members of the public are treated as incidental beneficiaries unless a different intention is manifested.” *Id.* (internal quotation marks omitted).

Plaintiffs’ assertion of third-party beneficiary status fails because the NYSHIP Contract evidences the *opposite* intent: it expressly provides that there are “No Third-Party Beneficiaries” of the contract, and “[n]othing contained in the Contract, expressed or implied, is intended to confer upon any person or corporation, other than the Parties hereto and their successors in interest and assigns, any rights or remedies under or by reason of the Contract.” NYSHIP Contract at 69. New York law is clear that a “no third-party beneficiary” provision is enforceable unless the plaintiff identifies “an exception to its application,” or a “basis for rejecting the no third-party beneficiary provision,” *Fuisz v. 6 E. 72nd St. Corp.*, 222 A.D.3d 402, 404 (1st Dep’t 2023), such

as express provisions “granting plaintiffs enforceable rights,” *Diamond Castle Partners IV PRC, L.P. v. IAC/InterActivecorp*, 82 A.D.3d 421, 422 (1st Dep’t 2011). Thus, it is not enough for Plaintiffs to allege they are mentioned in the NYSHIP Contract, or even that the performance of the contract will redound to their benefit. Rather, Plaintiffs must demonstrate, for the specific provisions of the NYSHIP Contract on which they base their claims, that it is “clear from the language of the contract that there was an intent to permit enforcement by the third party.” *Dormitory Auth. v. Samson Constr. Co.*, 30 N.Y.3d 704, 710 (2018) (emphasis added). Because the NYSHIP Contract contains no such language contemplating enforcement by Plaintiffs and, indeed, makes clear that no such enforcement is intended, Plaintiffs cannot pursue their contract claims under a third-party beneficiary theory.<sup>3</sup>

## **II. PLAINTIFFS’ CLAIMS UNDER N.Y. GBL §§ 349 AND 350 MUST BE DISMISSED BECAUSE THE ALLEGED DECEPTIVE PRACTICE WAS FULLY DISCLOSED**

Plaintiffs’ third and fourth claims for violation of N.Y. GBL §§ 349 and 350 must be dismissed because the allegations of the Complaint establish that the allegedly “deceptive” practice—the inaccurate listing of in-network providers—is fully disclosed to the public through Carelon’s public provider directory.

---

<sup>3</sup> Even if Plaintiffs’ allegations were otherwise adequate to establish their contract claims, their claim for breach of the covenant of good faith and fair dealing would be subject to dismissal as redundant of their breach of contract claim. “[A] claim for breach of the covenant will be dismissed as redundant where the conduct allegedly violating the implied covenant is also the predicate for breach . . . of an express provision of the underlying contract.” *TVT Recs. & TVT Music, Inc. v. Island Def Jam Music Grp.*, 244 F. Supp. 2d 263, 277 (S.D.N.Y. 2003) (internal quotation marks omitted). “Such a claim may be maintained only if it is based on allegations different than those underlying the accompanying breach of contract claim.” *Id.* (internal quotation marks omitted). Because Plaintiffs’ claim for breach of the covenant of good faith and fair dealing is based on the same alleged conduct as their breach of contract claim—failure to maintain an accurate provider directory, Compl. ¶ 280—their good faith and fair dealing claim is “redundant” and should be dismissed. *See TVT Recs.*, 244 F. Supp. 2d at 277.

“To make out a prima facie case under Section 349, a plaintiff must demonstrate that (1) the defendant’s deceptive acts were directed at consumers, (2) the acts are misleading in a material way, and (3) the plaintiff has been injured as a result.” *Chufen Chen v. Dunkin’ Brands, Inc.*, 954 F.3d 492, 500 (2d Cir. 2020) (internal quotation marks omitted). “Deceptive acts are acts that are likely to mislead a reasonable consumer acting reasonably under the circumstances.” *Id.* (internal quotation marks omitted). GBL Section 350 claims are “analyzed under the same ‘reasonable consumer’ standard as Section 349.” *Id.* “Under either provision, [i]t is well settled that a court may determine as a matter of law that an allegedly deceptive advertisement would not have misled a reasonable consumer.” *Id.* (alteration in original, internal quotation marks omitted).

Importantly, “where the allegedly deceptive practice is fully disclosed, there is no deception claim.” *Mazella v. Coca-Cola Co.*, 548 F. Supp. 3d 349, 357 (S.D.N.Y. 2021) (citing *Broder v. MBNA Corp.*, 281 A.D.2d 369, 371 (1st Dep’t 2001)). And a purportedly deceptive “omission” is actionable only where the defendant “alone possesses material information that is relevant to the consumer and fails to provide this information.” *Pelman v. McDonald’s Corp.*, 237 F. Supp. 2d 512, 529 (S.D.N.Y. 2003).

Plaintiffs allege Carelon’s directory misrepresented its network by inaccurately listing in-network providers, and that Carelon thereby “omitted” the “true breadth” of the network. Compl. ¶¶ 290–90. As Plaintiffs concede, however, Carelon’s provider directory is “publicly available to members and non-members of the NYSHIP plan.” *Id.* ¶ 183. Thus, the crux of Plaintiffs’ claim of deception—that any given provider is listed in the directory but is either not in-network or has inaccurate information—can readily be assessed, evaluated or tested by any person accessing the directory. Indeed, Plaintiffs’ counsel, themselves non-members of the Plan, demonstrated they were able to access the Carelon provider directory and ascertain whether listed providers were in-

network and accurately listed in the directory. *See id.* ¶¶ 86–91; 105–110; 125–130. Nor was Carelon in exclusive control of the purportedly “omitted” information about whether a provider remained in-network or had changed its contact information, as such information was also available from any given provider. *See Pelman*, 237 F. Supp. 2d at 529.

Given those facts, the purported deceptive practice on which Plaintiffs base their N.Y. GBL §§ 349 and 350 claims was, in fact, fully disclosed. Under those circumstances, the listing of a provider in Carelon’s directory would not have “misled a reasonable consumer,” *Chufen Chen*, 954 F.3d at 500, thus requiring dismissal of the claims, *see Mazella*, 548 F. Supp. 3d at 357.

### **III. PLAINTIFFS’ CLAIM UNDER INSURANCE LAW § 4226 MUST BE DISMISSED BECAUSE CARELON IS NOT AN INSURER**

Plaintiffs’ fifth claim under Insurance Law § 4226 must be dismissed because that statute, by its plain terms, applies only to “insurers,” and Carelon is not an insurer under New York law. As the statute makes clear, its prohibitions extend only to those authorized to do business in insurance in the state: “[n]o insurer authorized to do in this state the business of life, or accident and health insurance, or to make annuity contracts shall” engage in certain proscribed conduct. N.Y. Ins. Law § 4226(a). Although Plaintiffs allege Carelon is “authorized to provide health insurance in New York,” Compl. ¶ 311, that allegation is untrue.

As discussed above, in addition to the allegations of the Complaint, the Court may consider various other sources of information, including matters that are appropriately subject to judicial notice under Fed. R. Evid 201. *See Kramer*, 937 F.2d at 773. Furthermore, the Court “need not accept as true any allegations that are contradicted by documents deemed to be part of the complaint, or materials amenable to judicial notice.” *In re MBIA, Inc., Sec. Litig.*, 700 F. Supp. 2d 566, 576 (S.D.N.Y. 2010). Courts routinely take judicial notice of the records of government agencies, including state agencies. *See Simeone v. T. Marzetti Co.*, No. 21-CV-9111 (KMK), 2023

WL 2665444, at \*1 (S.D.N.Y. Mar. 28, 2023) (“Courts may take judicial notice of public documents or documents of public record in addition to records of administrative bodies, such as government agencies like the FDA.” (internal quotation marks omitted)); *see, e.g., Fernandez v. Zoni Language Ctrs., Inc.*, No. 15-CV-6066 (PKC), 2016 WL 2903274, at \*3 (S.D.N.Y. May 18, 2016), *aff’d*, 858 F.3d 45 (2d Cir. 2017) (“[T]he Court takes judicial notice of the fact that the Zoni Language Learning Centers at issue here were certified by and registered with the New York State Department of Education as ESL schools.”).

Plaintiffs’ allegation that Carelon is “authorized to provide health insurance in New York,” is contradicted by the records of the New York Department of Financial Services, which regulates and licenses companies to write insurance in the state. N.Y. Ins. Law § 1102 (explaining superintendent’s authority to license insurers); § 107 (defining superintendent as the superintendent of financial services). The Department of Financial Services maintains a database of “the most current information maintained by the Department” of companies licensed to write insurance.<sup>4</sup> That database does not list Carelon as a licensed insurer in the state, because it is not licensed as an insurer by the State of New York. *See* Declaration of Matthew J. Aaronson, dated August 29, 2025, ¶¶ 4–7 & Ex. B, C. The Court thus need not accept as true Plaintiffs’ allegation that Carelon is so authorized, as it is contradicted by the authoritative records of the Department of Financial Services.

---

<sup>4</sup> Department of Financial Services, Insurance Company Search, [https://www.dfs.ny.gov/apps\\_and\\_licensing/insurance\\_companies/search](https://www.dfs.ny.gov/apps_and_licensing/insurance_companies/search) (last visited Aug. 28, 2025).

Because Carelon is not an “insurer authorized to do in this state the business of life, or accident and health insurance, or to make annuity contracts,” N.Y. Ins. Law § 4226 does not apply to Carelon, and Plaintiffs’ fifth claim must be dismissed with prejudice.<sup>5</sup>

**IV. PLAINTIFFS’ CLAIM FOR FRAUDULENT MISREPRESENTATION MUST BE DISMISSED BECAUSE THEY DO NOT ALLEGE FACTS SHOWING REASONABLE RELIANCE OR A DUTY TO DISCLOSE**

Plaintiffs’ sixth claim for fraudulent misrepresentation must be dismissed because Plaintiffs have not alleged facts showing actual reliance on the purported misrepresentations, and they also have not alleged the existence of a fiduciary or other relationship upon which liability for a fraudulent omission could be founded.

The elements of a fraud are: “a misrepresentation or a material omission of fact which was false and known to be false by defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury.” *Tsinias Enters. Ltd. v. Taza Grocery, Inc.*, 172 A.D.3d 1271, 1272 (2d Dep’t 2019) (internal quotation marks omitted). A fraudulent omission is actionable only where there is a duty to disclose material information, such as a fiduciary duty owed to the plaintiff. *See Mandarin Trading Ltd. v. Wildenstein*, 16 N.Y.3d 173, 179 (2011).

Plaintiffs’ fraudulent misrepresentation claim fails because Plaintiffs’ do not plead facts that plausibly establish reasonable reliance. Plaintiffs repeatedly allege that the purpose and effect of Carelon’s alleged misrepresentations was to induce them to enroll in the NYSHIP Empire plan for which Carelon administered mental health benefits. Compl. ¶¶ 239, 292, 295, 305, 308, 322, 324, 327. Plaintiffs do not allege any other act or forbearance that was induced by or taken in

---

<sup>5</sup> Carelon need not be authorized to write insurance in the state because, as discussed above, it is not the insurer under the NYSHIP/Empire plan, and instead acts only as the claims administrator.

reliance on Carelon's purportedly inaccurate provider directory. But Plaintiffs' assertions of reliance fail because they do not "actually plead facts that underlie this reliance." *Granite Partners, L.P. v. Bear, Stearns & Co.*, 58 F. Supp. 2d 228, 258 (S.D.N.Y. 1999). Plaintiffs have not "allege[d] with any particularity" that, prior to making their "enrollment decisions" that were purportedly induced by Carelon's provider directory, Compl. ¶¶ 239, 313, they "actually read or saw" the provider directory, *Fero v. Excellus Health Plan, Inc.*, 236 F. Supp. 3d 735, 772 (W.D.N.Y. 2017); *DeBlasio v. Merrill Lynch & Co.*, No. 07CIV318(RJS), 2009 WL 2242605, at \*24 n.15 (S.D.N.Y. July 27, 2009) (rejecting conclusory allegation plaintiffs "justifiably relied" on representations absent specific allegations they "actually read and relied on" defendants' advertisements and statements); *Tuosto v. Philip Morris USA Inc.*, No. 05CIV.9384(PKL), 2007 WL 2398507, at \*9 (S.D.N.Y. Aug. 21, 2007) (failure to allege plaintiffs saw advertisement does not establish reliance).

Plaintiffs' claim for fraudulent misrepresentation also fails to the extent it is based on any purported fraudulent "omission." Plaintiffs do not allege they had a fiduciary relationship with Carelon or that Carelon owed them fiduciary duties. Nor have Plaintiffs alleged any other basis on which the Court could find a duty to disclose. *See Banque Arabe et Internationale D'Investissement v. Maryland Nat'l Bank*, 57 F.3d 146, 155 (2d Cir. 1995). Accordingly, Plaintiffs' fraudulent misrepresentation claim must be dismissed for this reason as it relates to claimed fraudulent omissions.

Because Plaintiffs have not pleaded facts to show reasonable reliance on the purported misrepresentations, or that Carelon had any duty to disclose any purported omission, Plaintiffs' sixth claim must be dismissed.

**V. PLAINTIFFS' CLAIM FOR NEGLIGENT MISREPRESENTATION MUST BE DISMISSED BECAUSE THEY HAVE NOT ALLEGED A SPECIAL RELATIONSHIP OR ACTUAL RELIANCE**

Plaintiffs' seventh claim for negligent misrepresentation must be dismissed because Plaintiffs: (1) have not alleged a special or privity-like relationship between them and Carelon that would impose a duty on Carelon with respect to the allegedly incorrect information; and (2) have not alleged facts that show reasonable reliance on any purported misrepresentation.

To state a claim for negligent misrepresentation, the plaintiff is required to demonstrate: “(1) the existence of a special or privity-like relationship imposing a duty on the defendant to impart correct information to the plaintiff; (2) that the information was incorrect; and (3) reasonable reliance on the information.” *Ginsburg Dev. Cos. v. Carbone*, 134 A.D.3d 890, 894 (2d Dep’t 2015). Plaintiffs’ allegations fail to establish the first or third elements.

**A. There Is No “Special Relationship” Between Plaintiffs and Carelon**

The threshold showing of a negligent misrepresentation claim is the existence of a “special relationship” between the plaintiff and defendant. *See id.* “[A] special relationship requires a closer degree of trust than an ordinary business relationship.” *Fleet Bank v. Pine Knoll Corp.*, 290 A.D.2d 792, 795 (3d Dep’t 2002) (internal quotation marks omitted). Thus, generally no “special relationship of trust or confidence” arises from commercial contracts, such as loan agreements, *id.* at 796, or insurance contracts, *Fero*, 236 F. Supp. 3d at 773.

Here, as discussed above, *supra* Part I, Plaintiffs have no privity at all with Carelon, as they have no direct contractual relationship with Carelon as the claims administrator, rather than insurer, under the Plan. And Plaintiffs do not allege any other relationship with Carelon that could establish a “special relationship” that would support a negligent misrepresentation claim. Indeed, if no special relationship exists even between an insurer and an insured under New York law, then plainly there is no such relationship between an insured and a plan administrator. Accordingly,

Plaintiffs' Complaint fails to establish the first element of a negligent misrepresentation claim.

**B. Plaintiffs Do Not Plead Reasonable Reliance**

As discussed above, *supra* part V(a), Plaintiffs have not pleaded facts to show reasonable reliance on Carelon's purported misrepresentations. Accordingly, for the same reason, Plaintiffs have failed to establish reasonable reliance for their fraudulent misrepresentation claim, they likewise fail to establish that further element of their negligent misrepresentation claim.

**VI. PLAINTIFFS' CLAIM FOR UNJUST ENRICHMENT MUST BE DISMISSED BECAUSE PLAINTIFFS HAVE CONFERRED NO BENEFIT ON CARELON, AND BECAUSE IT IS DUPLICATIVE OF PLAINTIFFS' LEGAL CLAIMS**

Last, Plaintiffs' eighth claim for unjust enrichment must be dismissed because Plaintiffs' allegations fail to demonstrate they conferred a specific and direct benefit on Carelon. "To prevail on a claim for unjust enrichment in New York, a plaintiff must establish: 1) that the defendant benefitted; 2) at the plaintiff's expense; and 3) that 'equity and good conscience' require restitution." *Kaye v. Grossman*, 202 F.3d 611, 616 (2d Cir. 2000). However, "[a]n unjust enrichment claim is not available where it simply duplicates, or replaces, a conventional contract or tort claim." *Ferdous v. Hasan*, 236 A.D.3d 992, 994 (2d Dep't 2025).

**A. Plaintiffs Conferred No Specific and Direct Benefit on Carelon**

Plaintiffs' allegations fail to establish they conferred a benefit on Carelon that would support their unjust enrichment claim.

The defendant's receipt of a "specific and direct benefit [is] necessary to support an unjust enrichment claim." *Kaye*, 202 F.3d at 616. "The 'essence' of such a claim 'is that one party has received money or a benefit at the expense of another.'" *Id.* (citation omitted). "Notably, in order to state an unjust enrichment claim, a plaintiff must show that the defendant actually received a benefit." *Regnante v. Sec. & Exch. Offs.*, 134 F. Supp. 3d 749, 772 (S.D.N.Y. 2015); "A complaint does not state a cause of action in unjust enrichment if it fails to allege that defendant received

something of value which belongs to the plaintiff.” *Chevron Corp. v. Donziger*, 871 F. Supp. 2d 229, 260 (S.D.N.Y. 2012).

Plaintiffs contend they conferred a benefit on Carelon by “enrolling in its health insurance plan,” which they allege “directed” the premiums they paid for their insurance coverage to Carelon. Compl. ¶ 339. But Carelon is not Plaintiffs’ insurer, as discussed above, *supra* Part I(a), and as each of the Plaintiffs concede, they pay their premiums to NYSHIP, not Carelon. Compl. ¶¶ 84, 104, 122. And while Plaintiffs allege that a “portion of members’ premiums are paid to Carelon,” *id.* ¶ 244, Plaintiffs do not allege that this payment to Carelon results from or changes with member enrollment or has any relationship to the specific content of the published provider directory. Stated differently, there is no allegation that the purported benefit Plaintiffs conferred—enrolling in the plan for which Carelon administers mental health services—actually resulted in Carelon’s receipt of money or another benefit at Plaintiffs’ expense. That failure to allege a Carelon’s receipt of a “specific and direct benefit” from Plaintiffs is fatal to Plaintiffs’ unjust enrichment claim.

**B. Plaintiffs’ Unjust Enrichment Claim Is Duplicative of Their Other Claims**

Plaintiffs’ unjust enrichment claim also must be dismissed because it is duplicative of Plaintiffs’ other legal claims, including their contract, tort, and statutory claims. “[T]he theory of unjust enrichment lies as a quasi-contract claim. It is an obligation the law creates in the absence of any agreement.” *Ferdous*, 236 A.D.3d at 994. Such an equitable claim is available only when there is no adequate remedy at law for the alleged harm. *See Samiento v. World Yacht Inc.*, 10 N.Y.3d 70, 81 (2008). Thus, where an unjust enrichment claim “ar[ises] from the same facts and d[oes] not allege distinct and different damages” from other causes of action alleged, it is properly dismissed. *See Town of Wallkill v. Rosenstein*, 40 A.D.3d 972, 974 (2d Dep’t 2007). And the dismissal of the causes of action for which unjust enrichment is duplicative does not cure this deficiency or preclude dismissal of the unjust enrichment claim. *See Ferdous*, 236 A.D.3d at 994

(affirming dismissal of an unjust enrichment claim that “duplicated the[] breach of contract causes of action,” while also affirming dismissal of breach of contract cause of action as inadequately pleaded).

Here, Plaintiffs’ theory of unjust enrichment is that Plaintiffs “directed” premiums to Carelon which should be returned because Carelon did not deliver the promised network of in-network providers. Compl. ¶¶ 338–40. But this theory underlies each of Plaintiffs’ other causes of action. Compl. ¶¶ 274, 280, 290–91, 303–304, 312, 320–21, 332–333. Plaintiffs’ unjust enrichment claim is thus duplicative of Plaintiffs “conventional contract or tort claim[s]” and must be dismissed with prejudice for that additional reason. *See Ferdous*, 236 A.D.3d at 994.

**CONCLUSION**

For these reasons, Plaintiffs’ Complaint should be dismissed with prejudice.

Dated: August 29, 2025

Respectfully Submitted,

By: /s/ Matthew J. Aaronson

Matthew J. Aaronson  
TROUTMAN PEPPER LOCKE LLP  
875 Third Avenue  
New York, NY 10022  
T: (212) 704-6000  
matthew.aaronson@troutman.com

*Attorneys for Defendant  
Carelon Behavioral Health, Inc.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by CM/ECF to all counsel of record on this 29th day of August 2025.

*/s/ Matthew J. Aaronson*  
\_\_\_\_\_  
Matthew J. Aaronson