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
REPLY MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS

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Date: October 17, 2025
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Defendant Carelon Behavioral Health, Inc. ("Carelon"), submits this Reply Memorandum of Law in Support of its Motion to Dismiss the Complaint (ECF No. 1) ("Complaint" or "Compl.").

ARGUMENT

I. PLAINTIFFS FAIL TO SHOW AN ENFORCEABLE CONTRACT WITH CARELON, AND THEIR CLAIMS FOR BREACH OF CONTRACT AND THE COVENANT OF GOOD FAITH AND FAIR DEALING MUST BE DISMISSED

Plaintiffs argue their contract claims against Carelon should be allowed to proceed for three reasons: First, Plaintiffs argue that insureds are legally in privity with, and can thus pursue contract claims against, claims administrators they do not have a direct contract with. Second, Plaintiffs contend they adequately alleged a "direct contractual relationship" with Carelon based on the "insurance materials" it provides. Third, Plaintiffs assert they are third-party beneficiaries of the contract between the New York Department of Civil Service (the "Department") and Carelon (the "NYSHIP Contract") notwithstanding the contract's plain language. Plaintiffs' arguments fail.

A. Plaintiffs Have Failed to Show Contractual Privity With Carelon

First, Plaintiffs assert they are in privity with Carelon as the third-party administrator of mental health benefits for the NYSHIP plan, arguing that other courts have permitted such claims to proceed against third-party administrators. Plaintiffs' arguments misread those authorities.

Plaintiffs' lead case is *Sprentall v. Beacon Health Options, Inc.*, 20-cv-1703, 2021 WL 1063392 (S.D.N.Y. Mar 19, 2021), which they contend held that health plan members are in privity with third-party administrators. Opp'n at 6. But *Sprentall* reached no such conclusion. Rather, the Court in *Sprentall* denied a motion to dismiss because it concluded Beacon had not met its burden at the Rule 12 stage to show that New York law required dismissal on privity grounds of a plan participant's contract claims against a third-party administrator. *See id*. at *5–6. Moreover, *Sprentall* erroneously interpreted *Uddoh v. United Healthcare*, 16-cv-1002, 2017 WL 563973 (E.D.N.Y. Feb. 10, 2017), as having "allowed a breach of contract claim brought under New York

law to proceed against an insurance administrator that managed a program under the NYSHIP." *Sprentall*, 2021 WL 1063392, at *5. But though the *Uddoh* court observed that United was the NYSHIP plan administrator, it never ruled on whether United was subject to a breach of contract claim. Because *Uddoh* largely granted the motion to dismiss with leave to amend, the court declined to "pass upon" the breach of contract claim against United pending the filing of an amended complaint, noting only that "plaintiffs would be well-served to make those claims more plausible" in repleading. *See Uddoh*, 2017 WL 563973, at *5.

Here, Carelon has provided the Court with ample New York authority, not considered in *Sprentall*, holding that a third-party administrator like Carelon "has no contractual privity" with an insured. *See S.P. v. Dongbu Ins. Co.*, 174 A.D.3d 911, 914 (2d Dep't 2019); *Lipton v. Unumprovident Corp.*, 10 A.D.3d 703, 706 (2d Dep't 2004) (administrator not party to insurance contract owes no contractual duties and is not susceptible to breach of contract suit).[1] Plaintiffs attempt to distinguish *S.P.* by arguing that the court there dismissed the claim against an administrator only because it concluded the third-party administrator had disclaimed coverage at the direction of the insurer, while Plaintiffs here allege Carelon itself violated contractual duties. Opp'n at 7 n.2. That argument conflates the merits of the claim in *S.P.*—whether Plaintiffs had adequately alleged a cause of action under Insurance Law § 3420(a)(2) to recover against an insurer for an unsatisfied judgment against its insured—with the court's privity determination. *See S.P.*, 174 A.D.3d at 912, 914. But the court's determination that the third-party administrator "has no contractual privity with [the insured]" was not dependent on its determination that the administrator had acted without discretion; it was an *additional* basis for concluding plaintiff "had

[1] As *Sprentall* noted, this rule is consistent with the law in other jurisdictions. *See* 2021 WL 1063392 at *5, n.6 (observing that federal courts across the country had similarly concluded that insureds lack privity with third-party administrators, but finding those cases non-controlling).

no cause of action" against the administrator. *See id*. at 914 (listing grounds for dismissal of claim against third-party administrator). Plaintiffs' attempt to undercut *S.P.*'s holding that a third-party administrator is not in privity with the insured thus fails. And Plaintiffs make no attempt to distinguish *Lipton*'s holding that an administrator lacks privity with an insured. 10 A.D.3d at 706.

Instead, Plaintiffs argue that two essentially identical cases involving the same workers' compensation insurance trust establish that breach-of-contract claims against third-party administrators are viable under New York law. Opp'n at 7 (citing *Nyasha Servs., Inc. v. Recco Home Care Servs., Inc.*, 141 A.D.3d 792, 797–98 (3d Dep't 2016); *Nyasha Servs., Inc. v. People Care Inc.*, 141 A.D.3d 785, 790–91 (3d Dep't 2016)). But neither of the *Nyasha Services* cases address privity at all and instead analyze whether the defendant could bring a third-party claim against the administrator as a third-party beneficiary of the contract between the administrator and the plaintiff trust. *See* 141 A.D.3d at 797–98; 141 A.D.3d at 790–91. And the court concluded third-party beneficiary status was appropriate there due to an "express indemnification clause" between the administrator and the trust for such claims, and a "corresponding absence of any language expressly negating enforcement by third parties." 141 A.D.3d at 790; *see also* 141 A.D.3d at 797 (discussing indemnification clause). By contrast, as discussed in Carelon's motion and below, the NYSHIP Contract expressly *precludes* enforcement by third parties, and provides Plaintiffs no enforceable rights. Plaintiffs' reliance on the *Nyasha Services* cases is accordingly misplaced, and Plaintiffs have offered no authority that would permit a contract claim against a third-party administrator like Carelon to proceed under New York law.[2]

[2] Plaintiffs also cite *Blue Cross of Ne. New York, Inc. v. Ayotte*, 35 A.D.2d 258, 260 (3d Dep't 1970), for the proposition that "[p]rivity in an action by or against the beneficiary of this type of contract has not been required in New York." Opp'n at 7. But the facts and ruling in *Ayotte* make clear that the "privity" the court concluded was unnecessary is privity between the *insurer* and dependent beneficiaries under a health insurance contract who are not themselves signatories to

B. Plaintiffs Have Not Adequately Alleged a Direct Contract With Carelon

Plaintiffs next argue a direct contract exists between Carelon and Plaintiffs based on the "insurance materials provided by the Defendant," including Carelon's representations about its provider network. Opp'n at 8. Plaintiffs contend it is "well settled that insurance plan members may sustain a claim for breach of contract based on such materials" because the "written representations regarding the benefits it offered to its customers form a contract." *Id*.

But the cases Plaintiffs rely on do not hold that providing "marketing materials" can *establish* a contract where one does not exist, only that such materials may provide or supplement the *terms* of an otherwise ambiguous agreement. In *Orlander v. Staples*, *Inc.*, 802 F.3d 289 (2d Cir. 2015), the court considered a brochure provided upon the customer's purchase of a "two-year 'Carry-in' Protection Plan" that set forth the agreement's terms. *Id*. at 293, 295. In *Salomon v. E. & W. Blanksteen Agency, Inc.*, 120 A.D.2d 427 (1st Dep't 1986), the court concluded an insured could rely on "solicitation materials as part of the insurance contract binding the insurer," and thus ambiguities in those materials precluded summary judgment. *Id*. at 428–29; *see Rynasko v. New York Univ.*, 63 F.4th 186, 198 (2d Cir. 2023) (marketing materials could establish that the mutual intent of students and universities at the time of enrollment in classes); *Lawrence v. Town of Irondequoit*, 246 F. Supp. 2d 150, 166 (W.D.N.Y. 2002) (considering terms of employment manual allegedly made enforceable by parties conduct, including municipal resolution).

In none of these cases, however, did the court conclude that representations or marketing materials provided by a defendant to a plaintiff can *create* a contractual relationship where one does not otherwise exist. This is unsurprising, as it is black letter contract law that no contract is

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the contract. *See id.* at 259–60, 261 (holding that dependent wife of insured was bound by non-duplication coverage exclusion adopted by amendment to policy notwithstanding her lack of privity with insurer). That is an entirely different relationship from the one alleged here.

formed absent a "meeting of the minds on the agreement" and "[m]utual assent evincing the intention of the parties to *form a contract*." *Gomez v. Bicknell*, 302 A.D.2d 107, 115–16 (2d Dep't 2002) (emphasis added). Carelon's alleged provision of marketing or solicitation materials, or representations about the services to be offered, cannot establish the *existence* of a contract without evidence of mutual assent to contract with Plaintiffs. Because Plaintiffs have alleged no such facts, Plaintiffs' contention that Carelon entered into a direct contractual relationship with them fails.

C. Plaintiffs Are Not Third-party Beneficiaries of The NYSHIP Contract

Last, Plaintiffs contend they are third-party beneficiaries of the NYSHIP Contract because they are in privity with Carelon, insureds are third-party beneficiaries of "group insurance policies" under New York Law, and Carelon rendered services under the contract directly to Plaintiffs. As discussed above, Plaintiffs are not in privity with Carelon. Their other arguments also fail.

It is true that, "[u]nder a group insurance program, a central entity—the group—enters into a contract with an insurance provider and acts as the policyholder. Members of the group are the third-party beneficiaries of that contract." *Dubuisson v. Stonebridge Life Ins. Co.*, 887 F.3d 567, 569 (2d Cir. 2018). But the NYSHIP Contract is not an insurance contract, it is an agreement for Carelon to provide *administrative services* to the Department of Civil Service. *See* ECF No. 1-1 at 2 (providing that the Department is engaging Carelon "to deliver the MHSU Disorder Program Administrative Services"). Rather, the NYSHIP plan at issue is self-insured, Motion at 7, and the NYSHIP Contract defines Carelon's obligations to the Department as third-party administrator. *See* ECF No. 1-1 at 5–30 (explaining scope of services Carelon will provide to the Department).

Plaintiffs' argument that Carelon's performance under the contract is "rendered directly to" Plaintiffs is also without merit. The language of the NYSHIP Contract on which Plaintiffs rely to argue an intent "to provide essential behavioral health insurance protection" to state employees is describing the purpose of NYSHIP as a whole, not the NYSHIP Contract to which Carelon is a

party. ECF No. 1-1 at 2. Plaintiffs identify no provision of the NYSHIP Contract that requires Carelon to provide any benefit to them directly, rather than to provide administrative services to the Department. And, in any event, "for a contract to confer enforceable third-party beneficiary rights, 'it must appear "that no one other than the third party can recover if the promisor breaches the contract" or the contract language should otherwise clearly evidence "an intent to permit enforcement by the third party."'" *Debary v. Harrah's Operating Co.*, 465 F. Supp. 2d 250, 263–64 (S.D.N.Y. 2006), *aff'd*, 547 F.3d 115 (2d Cir. 2008) (quoting *Artwear, Inc. v. Hughes*, 202 A.D.2d 76, 82 (1st Dep't 1994)). Here, Plaintiffs do not allege the Department could not enforce an alleged breach of the NYSHIP Contract, and the contract expressly precludes enforcement by third parties. ECF No. 1-1 at 69. Plaintiffs' third-party beneficiary claim fails.

II. THE FULL-DISCLOSURE DOCTRINE PRECLUDES PLAINTIFFS' N.Y. GBL §§ 349 AND 350 CLAIMS

Plaintiffs challenge Carelon's invocation of the rule that no claim under N.Y. GBL §§ 349 and 350 will lie where the purportedly deceptive act was fully disclosed. But the cases on which Plaintiffs rely are distinguishable, as Carelon publicly disclosed its provider directory and the information contained therein. Plaintiffs rely heavily on *Nick's Garage, Inc. v. Progressive Cas. Ins. Co.*, 875 F.3d 107, 112 (2d Cir. 2017), for the proposition that Carelon did not "disclose[] the very practices that were alleged to be deceptive." Opp'n at 13–14. But in *Nick's Garage* the deceptive practice—failure to pay prevailing rates as policy required—was not disclosed until after the insured experienced a loss and the estimate was provided. 874 F.3d at 112. Conversely, because the public can access Carelon's provider directory, any person, prior to enrolling in plan or requiring services, can verify a provider's participation and availability for appointment.

Thus, this is not a situation where a consumer can only "later learn[]"—after enrolling or requiring services—that a provider is or is not available. *See Duran v. Henkel of Am., Inc.*, 450 F.

Supp. 3d 337, 350 (S.D.N.Y. 2020). Nor would a member of the public or a plan participant be required to "hunt" for the truth, or consult "small print" to determine whether a provider is in network. *See Mantikas v. Kellogg Co.*, 910 F.3d 633, 637 (2d Cir. 2018); *Sims v. First Consumers Nat'l Bank*, 303 A.D.2d 288, 290 (1st Dep't 2003). Rather, the very listing of a provider in the directory provides a person with the information needed to determine if a given provider has availability for appointments and continues to accept NYSHIP coverage. Compl. ¶¶ 86–91; 105–110; 125–130. Nor was Carelon in exclusive control of "material information that is relevant to the consumer and fail[ed] to provide this information." *Pelman v. McDonald's Corp.*, 237 F. Supp. 2d 512, 529 (S.D.N.Y. 2003). Because the provider directory that Plaintiffs contend was deceptive was fully disclosed, Plaintiffs cannot maintain claims for violation of N.Y. GBL §§ 349 and 350.

III. PLAINTIFFS' ALLEGATIONS DO NOT SUPPORT A CLAIM UNDER INSURANCE LAW § 4226

Plaintiffs contend their claim for violation of Insurance Law § 4226 must be allowed to proceed because there is a "factual dispute" whether Carelon or a predecessor was "ever authorized to engage in the business of health insurance in New York." Opp'n at 15. Plaintiffs are incorrect, because their only allegation related to Carelon's status as a licensed insurer alleges that Carelon "is authorized to provide health insurance in New York," Compl. ¶ 311, which is squarely refuted by appropriately judicially noticed evidence that Carelon is not so authorized.

Plaintiffs do not allege that, at some other point in time, Carelon "was ever authorized to engage in the business of health insurance in New York." Opp'n at 15. Nor do Plaintiffs allege facts supporting their apparent alternative argument that Carelon illegally offered health insurance in New York. *Id*. There can be no factual dispute as that question because those facts are simply not alleged. Plaintiffs cannot amend their Complaint by introducing new facts and legal theories in a brief in opposition to a motion to dismiss. *In re Bemis Co. Sec. Litig.*, 512 F. Supp. 3d 518,

541 (S.D.N.Y. 2021) (citing *Wright v. Ernst & Young LLP*, 152 F.3d 169, 178 (2d Cir. 1998)). The Complaint does not allege facts that support liability under Insurance Law § 4226.

IV. PLAINTIFFS DO NOT ALLEGE THEY RELIED ON THE INFORMATION IN CARELON'S PROVIDER DIRECTORY TO ENROLL IN THE PLAN

The crux of Plaintiffs' misrepresentation claims is that Carelon's inaccurate provider directory caused them to enroll in the NYSHIP plan for which Carelon provides administrative services. As Carelon explained, however, while Plaintiffs' complaint includes various general assertions of reliance in making their enrollment decision, Plaintiffs fail to "actually plead *facts* that underlie this reliance" on the purportedly inaccurate provider directory. *See Granite Partners, L.P. v. Bear, Stearns & Co.*, 58 F. Supp. 2d 228, 258 (S.D.N.Y. 1999) (emphasis added).

Among Plaintiffs' laundry list of allegations asserting reliance, they identify no allegation that *any* of the Plaintiffs "actually read or saw" the provider directory before enrolling. *See Fero v. Excellus Health Plan, Inc.*, 236 F. Supp. 3d 735, 772 (W.D.N.Y. 2017). While Plaintiffs argue they relied on Carelon's "website," they do not allege they saw or relied on the allegedly inaccurate *provider directory*—or any part of it—that is the heart of their claims. Plaintiffs thus failed to "allege with any particularity" facts underlying their claimed reliance on Carelon's provider directory. *See id.*; *DeBlasio v. Merrill Lynch & Co.*, No. 07CIV318(RJS), 2009 WL 2242605, at *24 n.15 (S.D.N.Y. July 27, 2009) (rejecting as conclusory allegation plaintiffs "justifiably relied" on representations absent allegation plaintiffs "actually read and relied on" advertisements and statements); *Tuosto v. Philip Morris USA Inc.*, 05CIV.9384(PKL), 2007 WL 2398507, at *9 (S.D.N.Y. Aug. 21, 2007) (finding no reliance without allegation plaintiff saw advertisement).

Nor can Plaintiffs' argument that they considered Carelon's provider directory *after* they had enrolled establish reliance on that directory in making an enrollment decision. Opp'n at 17. Because enrollment is the only act Plaintiffs allege they undertook in reliance on Carelon's

provider directory, *see* Compl. ¶¶ 239, 292, 295, 305, 308, 322, 324, 327, Plaintiffs cannot cite their post-enrollment reliance to establish a misrepresentation claim. Because Plaintiffs do not plead facts to show reasonable reliance on the purported misrepresentations, both Plaintiffs intentional and negligent misrepresentation claims must be dismissed.

V. PLAINTIFFS HAVE NOT IDENTIFIED A DUTY TO DISCLOSE THAT MAKES AN OMISSION ACTIONABLE

To support either a fraudulent or negligent misrepresentation based on an alleged omission, Plaintiffs would need to establish a duty to disclose. *See Mandarin Trading Ltd. v. Wildenstein*, 16 N.Y.3d 173, 179 (2011). They have failed to do so for either claim.

As to fraudulent omission, Plaintiffs contend they can proceed on such a claim without showing Carelon had a duty to disclose because Carelon possessed superior knowledge of the purportedly inaccurate provider directory and did not disclose the "full truth." Opp'n at 15 n.6. But Plaintiffs fail to explain how Carelon had superior knowledge regarding the contents of its provider directory when the provider directory was publicly disclosed.

As to negligent omission, Plaintiffs contend a duty exists because they are in privity with Carelon, Opp'n at 18, but, as discussed above, that is incorrect—no privity exists. Plaintiffs alternatively argue that a duty was established because Carelon provided information to them and had to duty to ensure its accuracy. *Id*. (*citing Silvercreek Mgmt., Inc. v. Citigroup, Inc.*, 248 F. Supp. 3d 428, 453 (S.D.N.Y. 2017)). But as *Silvercreek* makes clear, such a duty arises only where the defendant provides information to "a known party" for a "particular purpose." 248 F. Supp. at 453–54. None of Plaintiffs' allegations establish Carelon made any representations specifically *to them* as a known party, as the allegations Plaintiffs cite relate to general representations Carelon made to NYSHIP members or the public at large. *See Compl.* ¶¶ 205, 210, 225–26, 229, 289–90, 302–03, 318, 320, 322, 324, 332. These allegations do not establish a duty to disclose.

VI. PLAINTIFFS FAIL TO ALLEGE THEIR ENROLLMENT DECISION BENEFITED CARELON

Plaintiffs argue that their unjust enrichment claim is not subject to dismissal because they adequately alleged they conferred a benefit on Carelon. "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). As Carelon explained in its motion, Plaintiffs' allegations that their enrollment "directed" to Carelon a portion of premiums they paid to NYSHIP does not establish that Carelon *received* a benefit, because there is no allegation that Carelon's compensation under the NYSHIP Contract is tied to member enrollments or increased because of Plaintiffs' enrollment. In response, Plaintiffs point to their allegations that increased enrollment increases Carelon's "profits." Opp'n at 20. But these conclusory allegations are unsupported by any *facts* showing that Carelon received additional reimbursement from the state or experienced lower costs that actually constituted an increase in profit as a result of Plaintiffs' enrollment. Plaintiffs also contend that Carelon was able to charge higher premiums based on its alleged misrepresentations. Opp'n at 20. However, because NYSHIP, *not* Carelon (who is not the insurer), charged all premiums to Plaintiffs in this case, Compl. ¶¶ 84, 104, 122, the amounts Carelon could or would charge others for premiums is not relevant to whether Carelon received a benefit at Plaintiffs' expense. Plaintiffs' unjust enrichment claim accordingly fails.[3]

CONCLUSION

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

[3] While Carelon acknowledges that some federal courts in this circuit have permitted plaintiffs to pursue unjust enrichment claims in the alternative, as Plaintiffs argue, New York law is clear that such claims are properly dismissed at the pleading stage.

Dated: October 17, 2025

Respectfully Submitted,

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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 17th day of October 2025.

/s/ Matthew J. Aaronson
Matthew J. Aaronson