

Troutman Pepper Locke LLP
875 Third Avenue
New York, NY 10022



troutman.com

Matthew J. Aaronson
D 212.704.6006
matthew.aaronson@troutman.com

July 11, 2025

BY ECF

The Honorable Edgardo Ramos
United States District Court – Southern District of New York
40 Foley Square
New York, New York 10007

Re: *Doe, et al. v. Carelon Behavioral Health, Inc.*; No. 1:25-cv-03489-ER

Dear Judge Ramos:

Pursuant to Rules 1.A. and 2.A. of Your Honor’s Individual Practices, Defendant Carelon Behavioral Health, Inc. (“Carelon”) submits this letter to request a pre-motion conference with the Court regarding Carelon’s anticipated motion to dismiss for failure to state a claim.

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 for state employees, retirees, and their dependents. Compl. ¶¶ 8, 20-22. NYSHIP offers a “Preferred Provider Organization” plan, for which Carelon administers mental health benefits (the “Plan”). *Id.* ¶¶ 131–32. Carelon has administered the Plan under a contract between itself and the New York State Department of Civil Service since 2016 (the “NYSHIP Contract”). *Id.* ¶ 132.

Plaintiffs allege that 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 allege those alleged inaccuracies caused them damage by delaying treatment and/or incurring the costs of using out-of-network providers. *E.g., id.* ¶¶ 3–4, 13–14, 254. Plaintiffs assert claims for: (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 GBL § 350; (5) violation of N.Y. Ins. Law § 4226; (6) fraudulent misrepresentation; (7) negligent misrepresentation; and (8) unjust enrichment. Compl. ¶¶ 268–345. Each of those causes of action must be dismissed.¹

Plaintiffs’ first cause of action for breach of contract must be dismissed because Plaintiffs have not pleaded the existence of a contract or breach they have the right to enforce. *See Diesel Props S.R.L. v. Greystone Bus. Credit II LLC*, 631 F.3d 42, 51 (2d Cir. 2011) (elements of breach of contract include existence of contract and breach). “To plead these elements, ‘a plaintiff must identify what provisions of the contract were breached as a result of the acts at issue.’” *Ellington*

¹ Carelon reserves the right to assert additional grounds for dismissal omitted herein due to space limitations.

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Credit Fund, Ltd. v. Select Portfolio Serv., Inc., 837 F. Supp. 2d 162, 189 (S.D.N.Y. 2011) (citation omitted). 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 Plaintiffs are not parties to that contract and have no right to enforce it. While Plaintiffs allege they are "intended third-party beneficiaries" of the NYSHIP contract, *id.* ¶ 270, "[p]roving 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, N.A.*, 747 F.3d 44, 49 (2d Cir. 2014). Here, the NYSHIP Contract expressly states 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." (ECF No. 1-1 at 69). While Plaintiffs cursorily allege they have a direct contractual relationship with Carelon "[l]ike any insurer or insured," Compl. ¶ 270, they do not allege the terms of that purported contract, nor do they "identify what provisions of the contract were breached," *Ellington Credit Fund*, 837 F. Supp. 2d at 189. This is because there is no contractual relationship between the Plaintiffs and Carelon. These allegations are thus insufficient to support a cause of action for breach of contract. *See Diesel Props*, 631 F.3d at 51.

Plaintiffs' second cause of action for breach of the covenant of good faith and fair dealing must be dismissed because, as noted above, Plaintiffs have failed to plead an enforceable contract. A breach of the covenant of good faith and fair dealing 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 Pub. Co. of Am., LLC*, 740 F. Supp. 2d 457, 463 (S.D.N.Y. 2010). Because Plaintiffs are not parties to or third-party beneficiaries of the NYSHIP Contract and do not have a separate contractual relationship with Carelon, they cannot plead a claim for breach of the covenant of good faith and fair dealing. *Id.* Moreover, even when a contract exists, such a claim must be based on "the reasonable expectations and inferences otherwise derived from the agreement." *TVT Records and TVT Music, Inc. v. The Island Def Jam Music Group*, 244 F.Supp.2d 263, 278 (S.D.N.Y. 2003) (emphasis added). Plaintiffs' failure to identify any terms of the putative "direct" contract between themselves and Carelon is fatal.

Plaintiffs' third and fourth causes of action for violation of GBL § 349 and 350 both require a showing that defendant engaged in acts "likely to mislead a reasonable consumer acting reasonably under the circumstances." *Chufen Chen v. Dunkin' Brands, Inc.*, 954 F.3d 492, 500 (2d Cir. 2020). "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.* (omission in original) (internal quotation marks omitted). And "there can be no section 349(a) [or 350] claim when the allegedly deceptive practice was fully disclosed." *Id.* (quoting *Broder v. MBNA Corp.*, 281 A.D.2d 369, 371 (1st Dep't 2001)). Moreover, 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). Here, Plaintiffs' allegations are that Carelon's directory misrepresented the providers in its network and "omitted" the extent of inaccuracies and "true breadth" of the network. Compl. ¶¶ 290–90. But as Plaintiffs concede, Carelon's provider directory is "publicly available to members and non-members of the NYSHIP plan," *id.* ¶ 183, and any such person thus

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has the means to ascertain whether any given provider is in network and accurately listed in the directory, *see id.* ¶¶ 86–91; 105–110; 125–130 (detailing how Plaintiffs’ counsel—nonmembers—were allegedly able to ascertain whether providers were in-network and accurately listed in the directory). The allegedly deceptive conduct was thus “fully disclosed” to the public, and therefore was not misleading as a matter of law. *Chufen Chen*, 954 F.3d at 500.

Plaintiffs’ fifth cause of action under N.Y. Ins. Law § 4226 must be dismissed because the statute, by its plain terms, does not apply to Carelon. The statute provides that “[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 conduct. N.Y. Ins. Law § 4226(a). Although Plaintiffs allege Carelon is “authorized to provide health insurance in New York,” that allegation is untrue and is contradicted by the records of the New York Department of Financial Services, which regulates the business of insurance in New York.² Plaintiffs’ § 4226 claim fails.

Plaintiffs’ sixth cause of action for negligent misrepresentation fails because Plaintiffs have not alleged a special relationship or actual reliance on the purported misrepresentation. A threshold showing for a negligent misrepresentation claim is “the existence of a special or privity-like relationship imposing a duty on the defendant to impart correct information to the plaintiff.” *Abu Dhabi Com. Bank v. Morgan Stanley & Co.*, 910 F. Supp. 2d 543, 546 (S.D.N.Y. 2012). However, “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 “[n]o special relationship of trust or confidence arises” from commercial contracts, such as loan agreements, *id.*, or insurance contracts, *Fero v. Excellus Health Plan, Inc.*, 236 F. Supp. 3d 735, 773 (W.D.N.Y. 2017). But even if such a contract could supply the requisite special relationship, Plaintiffs lack privity with Carelon because its contract is with the State of New York, not Plaintiffs. Compl. ¶ 132. Moreover, Plaintiffs cannot establish reliance on the purported inaccuracies in Carelon’s provider directory. *See Abu Dhabi*, 901 F.Supp. 2d at 546 (“reasonable reliance” a required element of negligent misrepresentation claim). Plaintiffs do not “allege with any particularity that they actually read or saw” the directory, *see Ferro*, 236 F. Supp. at 772, before “choosing [Carelon’s] plan,” such that it would have affected their “enrollment decisions,” Compl. ¶¶ 322, 313.

Plaintiffs’ seventh cause of action for fraudulent misrepresentation similarly fails because Plaintiffs have not established justifiable reliance on the purported misrepresentations or a special relationship that would support liability for a claimed omission. *See Tsiniias Enterprises Ltd. v. Taza Grocery, Inc.*, 101 N.Y.S.3d 138, 140 (2d Dep’t 2019) (“justifiable reliance” a required element of fraud); *Mandarin Trading Ltd. v. Wildenstein*, 16 N.Y.3d 173, 179 (2011) (fraudulent omission not actionable absent fiduciary or other special relationship).

Finally, Plaintiffs’ eighth cause of action for unjust enrichment fails because Plaintiffs fail to allege they conferred a benefit on Carelon. *See Kaye v. Grossman*, 202 F.3d 611, 616 (2d Cir. 2000) (A “specific and direct benefit [is] necessary to support an unjust enrichment claim.”). As Plaintiffs concede, they paid insurance premiums to NYSHIP, not to Carelon. Compl. ¶¶ 84, 104, 122. Hence, the unjust enrichment claim fails.

² Carelon intends to support its motion with a request for judicial notice of DFS’s records.

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Respectfully submitted,

TROUTMAN PEPPER LOCKE LLP

By: 

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

*Attorneys for Defendant
Carelon Behavioral Health, Inc.*

cc: All counsel of record (via ECF)