UNITED STATES DISTRICT COURT
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.	Case No. 25 Civ. 3489 (ER)

PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

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Plaintiffs Jane Doe (on behalf of Minor Doe), Hannah Landerer, and Steven Marks respectfully submit this memorandum of law in opposition to defendant Carelon Behavioral Health, Inc.'s motion to dismiss the Complaint ("Mot.").

PRELIMINARY STATEMENT

Carelon provides mental health insurance benefits to Plaintiffs and other New York State government employees who have chosen to enroll in its healthcare plan, which is known as the Empire Plan. Carelon is statutorily and contractually required to offer enrollees a sufficiently broad network of mental health providers and to accurately list these providers in its provider directory. However, Carelon's provider network is woefully inadequate. Those who enroll in its plan have access to very few in-network providers, making it nearly impossible for them to obtain affordable treatment for their mental health problems.

In order to attract customers and create the appearance of network adequacy, Carelon lies about the breadth of its provider network. In its marketing materials, plan documents, and provider directory, it falsely represents that it has a robust network of mental health professionals who are available to see new patients. In reality, the vast majority (more than 80%) of the providers listed do not exist, are not in-network, are not accepting new patients, and/or do not provide relevant services. As a result of Carelon's deception, Plaintiffs enrolled in its healthcare plan, paid inflated premiums for a largely worthless product, spent thousands of dollars on out-of-network care, and wasted precious time searching in vain for in-network providers.

Plaintiffs brought this case to hold Carelon accountable for its dangerous and egregious violations of its contractual, statutory, and common law duties. Specifically, Plaintiffs assert claims for: (1) breach of contract; (2) breach of the implied covenant of good faith and fair dealing; (3) deceptive business practices in violation of N.Y. GBL § 349; (4) false advertising in violation of N.Y. GBL § 350; (5) violation of N.Y. Insurance Law § 4226; (6) fraudulent misrepresentation;

(7) negligent misrepresentation; and (8) unjust enrichment. Carelon moves to dismiss all of these claims, offering a slew of meritless arguments.

Carelon seeks dismissal of the breach of contract and breach of the implied covenant of good faith and fair dealing claims on the grounds that Plaintiffs lack privity with Carelon. However, courts have squarely rejected this argument, including in a case brought by a New York State employee against Carelon. Plaintiffs have contractual privity with Carelon. They are also third-party beneficiaries of Carelon's contract with New York State. They can sue under either theory.

Carelon seeks dismissal of the GBL claims on the grounds that Plaintiffs could have discovered Carelon's deception by contacting all of the providers listed in its directory. This argument is borderline frivolous. The fact that consumers could potentially investigate and eventually uncover a company's deception is no defense to a GBL claim.

Carelon seeks dismissal of the Insurance Law § 4226 claim by pointing to a government website, which purportedly shows that Carelon does not currently possess a New York insurance license. However, that does not resolve the issue. Discovery is needed to determine Carelon's liability.

Carelon seeks dismissal of the fraudulent misrepresentation claim on the grounds that Plaintiffs do not sufficiently allege reliance on Carelon's misrepresentations. Carelon is wrong. The Complaint clearly, and repeatedly, details the multiple ways in which Plaintiffs relied on Carelon's misrepresentations. Specifically, the Complaint alleges that Plaintiffs chose to enroll in the Empire Plan (instead of better, cheaper options) based on the lies Carelon told about its provider network, and that Plaintiffs detrimentally relied on Carelon's inaccurate directory when searching for in-network providers.

Carelon seeks dismissal of the negligent misrepresentation claim on the grounds that (1) it had no duty to impart accurate information to Plaintiffs and (2) Plaintiffs do not sufficiently plead reliance. Both contentions are incorrect. Carelon had a duty to impart accurate information to Plaintiffs because they are in privity and also, separately, because Carelon knew Plaintiffs would rely on its provider directory. And, as explained above, Plaintiffs sufficiently allege that they relied on Carelon's misrepresentations.

Finally, Carelon seeks dismissal of the unjust enrichment claim on the grounds that (1) Plaintiffs fail to allege a benefit conferred on Carelon and (2) the claim is duplicative of other claims. But Plaintiffs *have* alleged that Carelon benefited from lying about its provider network: the lies artificially inflated the price of, and induced Plaintiffs to enroll in, the Empire Plan, which increased the premiums paid to Carelon. And the law is clear that Plaintiffs may pursue their claim for unjust enrichment in the alternative, and in addition, to their other claims.

In sum, Carelon's motion to dismiss should be denied in its entirety.

BACKGROUND

Plaintiffs are New York State government employees (or the family members of an employee) who have enrolled in a health insurance plan known as the New York State Health Insurance Program Empire Plan ("Empire Plan").[1] Compl. ¶¶ 8, 20–22. Carelon provides all of the mental health-related insurance benefits to those enrolled in the Empire Plan. *Id*. ¶¶ 23, 64.

Federal and state law require Carelon to maintain a sufficiently broad network of psychiatrists, psychologists, therapists, and other mental health providers to furnish mental health services to its members. *Id*. ¶¶ 46–49. These "network adequacy" laws are designed to ensure that companies like Carelon offer convenient access to a sufficient number and array of in-network

[1] The Complaint also refers to this plan as the NYSHIP Plan and NYSHIP Empire Plan.

providers to meet the diverse needs of the insured population. *Id*. Federal and state law further require Carelon to publish an accurate, and regularly updated, directory of the providers who are in its network and available to see new patients. *Id*. ¶¶ 40–44, 168–69, 179.

Carelon's provider network is woefully inadequate. Indeed, there are very few mental health providers who take Carelon's insurance and are available to see new patients. *Id*. ¶¶ 6, 13, 50, 200, 203, 213–14, 223, 319–20. However, in order to attract customers and create the appearance of network adequacy, Carelon has consistently lied about its deficient network. *Id*. ¶¶ 8–9, 223, 239, 240–41, 249, 295. In marketing materials and plan documents (including the contract governing the Empire Plan) disseminated to Plaintiffs, Carelon promised them that by enrolling in its health insurance they would have access to the "deep," "broad," "robust" network of "more than 115,000" mental health providers listed in its provider directory. *Id*. ¶¶ 158, 171–85, 191–97, 200–04, 229, 289, 312. In reality, the overwhelming majority (more than 80%) of the providers listed in Carelon's directory—on which Carelon urged Plaintiffs to rely and knew they would rely—do not exist, do not take Carelon's insurance, are unavailable to see new patients, and/or do not provide relevant mental health services. *Id*. ¶¶ 3, 88, 107, 127, 186, 215, 236.

Carelon's deception worked. Plaintiffs and thousands of others enrolled in the Empire Plan, instead of better and less expensive options, because of Carelon's false promise that they would have access to a robust provider network that complied with network adequacy requirements. *Id*. ¶¶ 131, 134, 239, 255, 322–24, 338. This is not surprising: studies confirm that consumers choose their health insurance plan based largely on the breadth of the provider network. *Id*. ¶¶ 224, 227–28, 242–43.

Plaintiffs eventually discovered Carelon's scam when they sought treatment for their mental health issues. Using Carelon's directory, they contacted nearby providers listed as being

in-network, available to see new patients, and qualified to treat their particular mental health problems. *Id*. ¶¶ 82, 93, 95, 97, 103, 112, 115, 124. However, the providers either did not exist, did not take Carelon's insurance, did not possess the qualifications listed in the directory, or were unavailable to see new patients. *Id*. After months of trying unsuccessfully to obtain in-network care (during which time their mental health problems went untreated), Plaintiffs were forced to spend thousands of dollars to obtain care from out-of-network providers. *Id*. ¶¶ 14, 83, 97, 121, 254, 276.

LEGAL STANDARD

When evaluating a motion to dismiss under Rule 12(b)(6), a court must "construe the complaint liberally, accepting all factual allegations in the complaint as true, and drawing all reasonable inferences in the plaintiff's favor." *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 152 (2d Cir. 2002). To survive a motion to dismiss, "detailed factual allegations" are not required. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Rather, a complaint must simply contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Id*. at 570. A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Rule 12(b)(6) "does not impose a probability requirement at the pleading stage; it simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of [the truth of the allegations]." *Twombly*, 550 U.S. at 545.

ARGUMENT

Carelon moves to dismiss all eight claims in the Complaint. In support of its motion, Carelon offers a bevy of arguments as to why the lies it told about its provider network are not actionable. Each of these arguments is meritless.

I. PLAINTIFFS STATE A CLAIM FOR BREACH OF CONTRACT AND BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

Carelon does not dispute that Plaintiffs have sufficiently alleged that Carelon breached its contractual duty to maintain an accurate provider directory and adequate provider network. Rather, Carelon contends that Plaintiffs cannot assert a claim for breach of contract (or breach of the implied covenant of good faith and fair dealing) because they are not in privity with Carelon. Mot. at 6–10. The argument fails several times over. As courts have recognized—including in a case involving Carelon itself—insurance plan members may pursue a claim for breach of contract even when the contract is between the defendant and the members' employer. Moreover, Plaintiffs have adequately alleged that they have a direct contractual relationship with Carelon arising from the insurance materials issued directly to Plaintiffs. And, in any event, Plaintiffs have adequately alleged that they are third-party beneficiaries of Carelon's contract with the State of New York. In short, under any and all of these theories, Carelon's motion to dismiss should be denied.

A. Plaintiffs May Pursue a Claim for Breach of Contract Against Carelon

Plaintiffs have adequately alleged that they are in contractual privity with Carelon. Plaintiffs allege that (1) Carelon has a contract with New York State to provide mental health benefits to state employees like Plaintiffs and (2) the parties "also have a direct contractual relationship" based on the insurance materials provided to Plaintiffs. Compl. ¶¶ 269–70; *see id.* ¶¶ 171–80 (describing provisions of the NYSHIP contract). As courts have correctly recognized, Plaintiffs can state a claim for breach of contract against Carelon under either theory.

First, Plaintiffs have contractual privity with Carelon. Carelon (formerly known as Beacon Health Options, Compl. ¶ 23) has previously argued in this District that a NYSHIP insured's breach of contract claim against it should be dismissed for lack of privity. *See Sprentall v. Beacon Health Options, Inc.*, 2021 WL 1063392, at *5–6 (S.D.N.Y. Mar. 19, 2021). Judge Gardephe

correctly rejected the argument, holding that Carelon had failed to "cite[] a single New York case dismissing a breach of contract claim on privity grounds where the claim is brought by a plan participant against a third-party administrator." *Id*. at *5; *see id.* at *5–6 (observing that, in *Uddoh v. United Healthcare*, 2017 WL 563973, at *4 (E.D.N.Y. Feb. 10, 2017), court permitted breach of contract claim to proceed against administrator of NYSHIP plan). As the Court explained, because Carelon administers "the program to which Plaintiffs submit[] their benefit claims," it can be sued by insureds. *Id.* at *5. The Court therefore denied Carelon's motion to dismiss the contract claim insofar as it was "predicated on a lack of privity." *Id.* at *6.

Carelon simply ignores these cases, even though they were raised in Plaintiffs' pre-motion letter and even though Carelon's present counsel also represented it in *Sprentall*. And Carelon remains unable to point to any New York case dismissing a breach of contract claim by an insured against a provider of healthcare benefits like Carelon for lack of privity. To the contrary, New York courts have permitted breach of contract claims to proceed against administrators of insurance plans. *See, e.g.*, *Nyasha Servs., Inc. v. Recco Home Care Servs., Inc.*, 141 A.D.3d 792, 797–98 (3d Dep't 2016) (breach of contract claim against administrator of insurance program should not have been dismissed); *Nyasha Servs., Inc. v. People Care Inc.*, 141 A.D.3d 785, 790–91 (3d Dep't 2016) (same). And in any event, New York courts have long held that when an insured seeks to enforce the terms of a group insurance policy, "[p]rivity in an action by or against the beneficiary of this type of contract has not been required in New York." *Blue Cross of Ne. N.Y., Inc. v. Ayotte*, 35 A.D.2d 258, 260 (3d Dep't 1970).[2]

[2] Carelon relies on *S.P. v. Dongbu Ins. Co.*, 174 A.D.3d 911 (2d Dep't 2019), for the proposition that there is no contractual privity between an insured and a third-party administrator. But in that case, plaintiff alleged that the insurer failed to authorize payment based on its interpretation of the insurance contract, which the third-party administrator had no ability to control. *Id.* at 914. The Court dismissed the contract claim against the administrator only because the evidence

Second, Plaintiffs have adequately alleged that they have a "direct contractual relationship" with Carelon based on the "insurance materials provided by the Defendant." Compl. ¶ 270. That includes Carelon's representations, made directly to Plaintiffs in plan materials, that it has a broad network of mental health providers who are accurately listed in its directory. *See* Compl. ¶¶ 85, 181–87, 191, 193, 195, 197, 200–04, 214–16, 229, 289, 312. It is well settled that insurance plan members may sustain a claim for breach of contract based on such materials. *See, e.g., Orlander v. Staples, Inc.*, 802 F.3d 289, 294 & n.5 (2d Cir. 2015) (construing marketing brochure for insurance plan as forming contract with insured); *Salomon v. E. & W. Blanksteen Agency, Inc.*, 120 A.D.2d 427, 428–29 (1st Dep't 1986) ("Plaintiffs were entitled to rely upon the representations in the solicitation materials as part of the insurance contract binding the insurer."). In response to this argument, Carelon disputes only that it is an insurer, *see* Mot. at 7, but Plaintiffs have adequately alleged that it is, *see* Compl. ¶ 270. Regardless, Plaintiffs' argument does not hinge on Carelon's status as an insurer. Carelon's written representations regarding the benefits it offered to its customers form a contract, even if Carelon were not an insurer. *See, e.g.*, *Rynasko v. N.Y. Univ.*, 63 F.4th 186, 197–98 (2d Cir. 2023) (holding that university had contract with students based on terms "set forth in [the] school's bulletins, circulars, and handbooks" and other "marketing materials" (internal quotation marks omitted)); *Lawrence v. Town of Irondequoit*, 246 F. Supp. 2d 150, 165–69 (W.D.N.Y. 2002) (construing town's personnel manual as a contract governing healthcare benefits).

"conclusively established" that, among other things, it "did not have independent authority to issue the disclaimer [of coverage] and only did so at the direction of the insurer." *Id.* Here, on the other hand, Plaintiffs' allegations are that Carelon itself violated its contractual duties by failing to maintain an accurate provider directory and adequate provider network.

In short, as courts have correctly held, Plaintiffs may pursue a breach of contract claim based on their contract with Carelon.

B. Plaintiffs are Third-Party Beneficiaries of Carelon's Contract with the State of New York

Alternatively, Plaintiffs may pursue a claim for breach of contract against Carelon as intended third-party beneficiaries of Carelon's contract with the State of New York. As the Second Circuit has explained, "[g]roup insurance policies, unlike individual insurance policies, are contracts for the benefit of third parties. Under 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). Carelon's contract with the State was expressly intended "to provide essential behavioral health insurance protection to eligible New York State . . . employees," Dkt. 1-1 at 2, and it is well settled that "a third party will be deemed an intended beneficiary where performance is rendered directly to it under the terms of the contract." *Levin v. Tiber Holding Corp.*, 277 F.3d 243, 249 (2d Cir. 2002); *see* Restatement (Second) of Contracts § 302 ("a beneficiary of a promise is an intended beneficiary if . . . the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance"). Plaintiffs are therefore intended third-party beneficiaries who may assert a claim against Carelon for breach of its contract with the State. *See Levin*, 277 F.3d at 249; *Flickinger v. Harold C. Brown & Co., Inc.*, 947 F.2d 595, 600 (2d Cir. 1991) ("Where performance is to be rendered directly to a third party under the terms of an agreement, that party must be considered an intended beneficiary." (internal quotation marks omitted)).

Carelon makes two arguments to deny that Plaintiffs are third-party beneficiaries, but neither holds water. *First*, Carelon relies on language that its contract with the State is not

"intended to confer upon any person or corporation, other than the Parties hereto and their successors and interest and assigns, any rights or remedies under or by reason of the Contract." Dkt. 1-1 at 69; Mot. at 9–10. But Plaintiffs (Carelon's customers) are in privity with Carelon and are no strangers to the contract; to the contrary, they are the very people to whom Carelon owes performance. *See Sprentall*, 2021 WL 1063392, at *5–6. Under New York law, "[w]hen, as here, the insureds are covered by a group insurance contract between their employer and the insurer, the insureds are [] third-party beneficiaries of the insurance contract, and thus may enforce any rights they may have thereunder." *Brown v. Group Health Inc.*, 17 Misc.3d 1113(A), *7 (Sup. Ct., N.Y. Cnty. 2007); *accord Ayotte*, 35 A.D.2d at 260 ("it is well settled that an employee and his dependents are third party beneficiaries of a group insurance contract and are all bound by the terms of the contract" (citation omitted)).

Second, Carelon suggests that Plaintiffs must satisfy a heightened standard to demonstrate that they are third-party beneficiaries because they seek to enforce a "government contract[]." Mot. at 9 (quoting *Hillside Metro Assocs. v. JPMorgan Chase Bank*, 747 F.3d 44, 49 (2d Cir. 2014)). But that principle does not apply here because Plaintiffs are not seeking to enforce a contract intended to benefit the *public*; rather, Plaintiffs seek to enforce a contract benefiting a narrow class of state employees who enrolled in the Empire Plan. *See* Restatement (Second) of Contracts § 313 (stating that higher standard applies when promisor contracts "to do an act for or render a service to the public" at large). Courts around the country have held that when government contracts benefit a defined class of people, that defined class can sue to enforce the contract as third-party beneficiaries. *See, e.g.*, *Eldridge v. Shelby Cnty.*, 2020 WL 1962988, at *11–12 (W.D. Tenn. Apr. 23, 2020) (holding government employee was an intended beneficiary of government employee insurance policy); *McNeill v. N.Y.C. Hous. Auth.*, 719 F. Supp. 233, 248–

49 (S.D.N.Y. 1989) (Walker, *J.*) (holding Section 8 tenants were intended third-party beneficiaries of contracts between landlords and housing authority and could enforce those contracts); *Gonzalez v. St. Margaret's House Hous. Dev. Fund Corp.*, 620 F. Supp. 806, 810 (S.D.N.Y. 1985) (Leval, *J.*) (same, for contract between landlord and federal government); *Holbrook v. Pitt*, 643 F.2d 1261, 1271–73 (7th Cir. 1981) (same); *accord German v. Fed. Home Loan Mortg. Corp.*, 885 F. Supp. 537, 578 (S.D.N.Y. 1995) (adopting *McNeill*'s reasoning that tenants are third-party beneficiaries of Section 8 contracts). And, as already noted, it is black-letter New York law that "[w]hen, as here, the insureds are covered by a group insurance contract between their employer and the insurer, the insureds are [] third-party beneficiaries of the insurance contract, and thus may enforce any rights they may have thereunder." *Brown*, 17 Misc.3d 1113(A), *7; *accord Ayotte*, 35 A.D.2d at 260.

Thus, Plaintiffs are third-party beneficiaries of Carelon's contract with the State and are entitled to enforce that contract against Carelon.[3]

II. PLAINTIFFS STATE A CLAIM FOR VIOLATIONS OF GBL §§ 349 AND 350

General Business Law ("GBL") § 349 prohibits "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service." N.Y. Gen. Bus. Law § 349(a). To state a claim under GBL § 349, "a plaintiff must demonstrate that (1) the

[3] Carleon argues in a footnote that Plaintiffs' claim for breach of the covenant of good faith and fair dealing should be dismissed as redundant of their contract claim. Mot. at 10 n.3. "Courts have routinely declined to consider arguments mentioned only in a footnote on the grounds that those arguments are inadequately raised." *Phoenix Light SF Ltd. v. Bank of N.Y. Mellon*, 2017 WL 3973951, at *20 n.36 (S.D.N.Y. Sept. 7. 2017). In any event, Plaintiffs' claim for breach of the implied covenant is not duplicative of their contract claim. Although such claims are sometimes dismissed as duplicative, "a plaintiff can plead a claim for breach of the covenant of good faith and fair dealing where there is a dispute over the existence, scope, or enforceability of the putative contract." *Spencer-Smith v. Ehrlich*, 347 F.R.D. 606, 627 (S.D.N.Y. 2024) (internal quotation marks omitted). As discussed above, Carelon disputes the existence and enforceability of its contract with Plaintiffs, such that Plaintiffs may pursue their claim for breach of the implied covenant.

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) (citations omitted). "The standard for recovery under GBL § 350, while specific to false advertising, is otherwise identical to section 349." *Id*. at 501 n.4. Whether a defendant's conduct is materially misleading is generally "a question of fact that cannot be resolved on a motion to dismiss." *Cooper v. Anheuser-Busch, LLC*, 553 F. Supp. 3d 83, 97 (S.D.N.Y. 2021) (collecting cases).

Plaintiffs allege that Carelon has violated GBL §§ 349 and 350 by falsely assuring existing and prospective customers that they may obtain mental health care from the vast array of supposedly available, in-network providers listed in Carelon's directory, which, according to Carelon, is (and, under the law, must be) accurate and regularly updated. Compl. ¶¶ 6–11, 41, 43, 82, 95, 115, 124, 174–90, 195, 213–20, 236, 239, 289–91, 302–04. In reality, Carelon's provider network has always been virtually non-existent. *Id*. Very few of the providers listed in the directory are, as advertised, in-network and available to see new patients. *Id*. Carelon's directory is a façade, designed to create the appearance of a robust provider network in order to attract customers and satisfy network adequacy requirements. *Id*. ¶¶ 239, 241–49.

Carelon does not, and cannot, dispute that misleading consumers about the size and adequacy of its provider network violates GBL §§ 349 and 350. Carelon's only argument for dismissal is that its misrepresentations were not materially misleading because consumers could have contacted all of the providers on the directory and eventually discovered Carelon's scam. Mot. at 10–12. This argument is meritless.

Carelon misplaces reliance on the doctrine that there can be no deception claim when the allegedly deceptive practice is "fully disclosed." Mot. at 11 (quoting *Mazella v. Coca-Cola Co.*,

548 F. Supp. 3d 349, 357 (S.D.N.Y. 2021)). In *Mazella*, a beverage label's use of the allegedly deceptive term "slightly sweet" was deemed non-actionable because the label fully disclosed the amount of sugar and number of calories in the beverage. *Id*. Similarly, in *Chufen Chen*, the Second Circuit affirmed the dismissal of a deceptive advertising claim premised on the use of the term "steak"—which can mean either "a slice of meat" or "ground beef"—because the advertisement featured "multiple zoomed-in images that clearly depict the 'steak' in the Products as a beef patty." 954 F.3d at 500–01. The logic behind these full-disclosure cases is that it would be irrational for consumers to make an assumption about a product (*e.g.*, that the beverage is low-sugar or the steak is a slice of meat) that is clearly contradicted by the defendant. *Mazella*, 548 F. Supp. 3d at 356.[4]

The full-disclosure doctrine is inapplicable here. Carelon did not in any way disclose—much less fully disclose—that nearly all of the providers it represented as being in-network and available to see new patients were not in fact in-network and available to see new patients. *See Nick's Garage, Inc. v. Progressive Cas. Ins. Co.*, 875 F.3d 107, 125 (2d Cir. 2017) (doctrine requires defendants themselves to have "disclosed the very practices that were alleged to be deceptive"). Plaintiffs discovered this fact on their own after months of exhausting, unsuccessful attempts to obtain treatment from an in-network provider. Compl. ¶¶ 82, 93–97, 103, 115, 124. *See Duran v. Henkel of Am.*, 450 F. Supp. 3d 337, 350 (S.D.N.Y. 2020) (explaining that consumers state a GBL claim when they "later learned that the product did not, in fact, have the marketed quality"); *Mantikas v. Kellogg Co.*, 910 F.3d 633, 637 (2d Cir. 2018) (reversing dismissal of GBL claims, despite plaintiffs' ability to discover the truth, because "a reasonable consumer should not

[4] *See also Ludl Elecs. Prods., Ltd. v. Wells Fargo Fin. Leasing, Inc.*, 6 A.D.3d 397, 398 (2d Dep't 2004) (including an automatic renewal provision in lease of equipment not deceptive under GBL § 349 because it was clearly disclosed in the lease); *Sands v. Ticketmaster-N.Y., Inc.*, 207 A.D.2d 687, 687 (1st Dep't 1994) (dismissing GBL § 349 claim for excessive fees because record showed Ticketmaster fully disclosed the fees charged).

be expected to consult the Nutrition Facts panel on the side of the box to correct misleading information set forth in large bold type on the front of the box"); *Sims v. First Consumers Nat. Bank*, 303 A.D.2d 288, 290 (1st Dep't 2003) (explaining that consumers are not expected to hunt for the truth).[5] Not only did Carelon fail to disclose that its directory was grossly inaccurate, it affirmatively assured Plaintiffs that the directory was (as the law requires) accurate and reliable. Compl. ¶¶ 41, 43, 178–79, 202, 226, 239, 289–90, 292, 302–03, 318, 320, 324.

Where, as here, it is alleged that a defendant provided misleading information about insurance benefits without fully disclosing the truth up front, a GBL § 349/350 claim will survive a motion to dismiss, regardless of whether the plaintiff might have been able to discover the truth through in-depth investigation. *See, e.g.*, *Nick's Garage*, 875 F.3d at 124; *Orlander, Inc.*, 802 F.3d at 301; *Kronenberg v. Allstate Ins. Co.*, 2020 WL 1234603, at *3–4 (E.D.N.Y. Mar. 13, 2020); *Skibinsky v. State Farm Fire & Cas. Co.*, 6 A.D.3d 975, 975–76 (3d Dep't 2004). Moreover, the Second Circuit has explained that an insurer cannot defeat a GBL claim by contending it fully disclosed its practices where, as here, the "essence" of plaintiff's "claims is that Insurer *did not do* what its policy said it would do." *Nick's Garage*, 875 F.3d at 125 (emphasis in original).

III. PLAINTIFFS STATE A CLAIM FOR VIOLATION OF N.Y. INSURANCE LAW § 4226

New York Insurance Law § 4226 states that "[n]o insurer authorized to do in this state the business of … health insurance … shall[] issue or circulate, or cause or permit to be issued or circulated on its behalf, any illustration, circular, statement or memorandum misrepresenting the terms, benefits or advantages of any of its policies or contracts." N.Y. Ins. Law § 4226(a).

[5] It is particularly cruel to argue that individuals suffering from serious mental health problems should be expected to spend countless hours investigating whether advertised mental health benefits were real.

Plaintiffs claim that Carelon has violated § 4226 by misrepresenting the network of providers available under its health insurance plan. Compl. ¶ 311. Carelon contends that it cannot be held liable because the New York Department of Financial Services ("DFS") website does not show Carelon as currently possessing a New York insurance license. Mot. at 13.

The parties have a factual dispute over whether, at any point during the multi-year period relevant to this claim, Carelon—or its predecessor Beacon Health Options (*id*. ¶ 181)—was ever authorized to engage in the business of health insurance in New York. Defense counsel's search on DFS's website on August 28, 2025—which shows, at most, a single snapshot in time—does not resolve this dispute. Accordingly, Plaintiffs are entitled to seek discovery on whether Carelon and/or Beacon Health Options, which are/were major players in the health insurance business, have ever been authorized to conduct this business in New York.

Even if discovery were to reveal that Carelon and Beacon Health Options were never *authorized* to engage in the business of health insurance in New York, Plaintiffs expect that, at a minimum, it will confirm that they nonetheless *have been* engaged in this business. Carelon cannot evade liability under § 4226 simply because it engaged in prohibited conduct without a license.

IV. PLAINTIFFS STATE A CLAIM FOR FRAUDULENT MISREPRESENTATION

Plaintiffs allege that Carelon has fraudulently misrepresented the breadth and adequacy of its provider network, which is virtually non-existent. Carelon seeks dismissal of the fraudulent misrepresentation claim, arguing that Plaintiffs do not plausibly allege that they relied on Carelon's misrepresentations. Mot. at 14–15. That is demonstrably false. Plaintiffs assert detailed allegations regarding reliance.[6]

[6] Carelon also contends that, because the Complaint mentions fraudulent omissions, Plaintiffs were required to allege "that Carelon owed them fiduciary duties." Mot. at 15. However, fiduciary duties are irrelevant to the analysis. "[W]here – as here – a plaintiff's 'theory of fraud' is premised on both affirmative misrepresentations and material omissions, a plaintiff need not plead or prove

First, Plaintiffs allege that they relied on Carelon's misrepresentations when choosing to enroll in the Empire Plan. Most notably, they state that Carelon's false "representations about the size and breadth of the mental health provider network, the ease of finding mental health treatment by using the allegedly accurate provider directory, the freedom to choose any listed in-network provider, the ability to control costs by seeing an in-network provider, and the comprehensive coverage of mental health care would induce a reasonable consumer—and *did induce Plaintiffs—to choose the [Empire] plan*" from the "choice of health plans" available to them. Compl. ¶¶ 131, 239 (emphasis added). *See also id.* ¶ 322 (Carelon's misrepresentations about the breadth of its provider network "induce[d] reliance by Plaintiffs and Class members as to the services and benefits that would be delivered to them as a result of choosing Defendant's plan"), ¶ 323 ("Plaintiffs and Class members justifiably relied on [Carelon's] representations" about the provider network they would have access to under the Empire Plan), ¶ 324 (Carelon's "representations … conveyed that [Carelon's] provider directory was accurate and broad, and that mental health care would be covered," and "Plaintiffs and Class members did [] attach importance to such representations and [were] induced to enroll in such a plan" as a result). Indeed, Plaintiffs allege that, had Carelon not misrepresented the breadth of its provider network, "they would have pursued other health care options." *Id.* ¶ 255; *see also id.* ¶ 211 (similar).

Plaintiffs also plead additional facts supporting this alleged reliance. They explain how: (1) provider network size was a key consideration when choosing their health insurance plan, in

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the existence of a fiduciary duty." *Monterey Bay Mil. Hous., LLC v. Ambac Assurance Corp.*, 531 F. Supp. 3d 673, 703 (S.D.N.Y. 2021). Moreover, fraudulent omissions are actionable regardless of fiduciary duties where, as here, the defendant (1) addresses a topic but does not disclose the full truth or (2) "possesses superior knowledge, not readily available to the other, and knows that the other is acting on the basis of mistaken knowledge." *Manhattan Motorcars, Inc. v. Automobili Lamborghini, S.p.A.*, 244 F.R.D. 204, 213 (S.D.N.Y. 2007).

part because of the financial advantages of seeing in-network providers, *id*. ¶¶ 135–41, 165, 224–28, 239, 242, 321–24; (2) Carelon made representations on its website that grossly exaggerated the breadth of its provider network in order to attract customers to the Empire Plan, *id*. ¶¶ 183–86, 191–204, 239; (3) Plaintiffs relied on Carelon's website when studying the benefits available under the Empire Plan, *id*. ¶¶ 85, 101, 123, 149, 239; and (4) Plaintiffs were harmed, and Carelon was unjustly enriched, when Plaintiffs decided to enroll in the Empire Plan based on Carelon's lies about its provider network, *id*. ¶¶ 326, 338–39.

Second, Plaintiffs allege that they detrimentally relied on Carelon's fraudulent provider directory when trying to obtain treatment for their mental health problems. *Id*. ¶¶ 14, 82, 95, 112–15, 121, 124, 210–11. Plaintiffs spent countless hours contacting providers listed in Carelon's directory, *id*., which Carelon represented as being accurate and reliable, *id*. ¶¶ 202, 226, 289–90, 302–03, 318, 320, 324. Because Carelon's directory was grossly inaccurate, Plaintiffs could not find in-network providers to treat them, despite months of trying. *Id*. ¶¶ 14, 82, 95, 112–15, 121, 124. As a result of their reliance on Carelon's directory, they wasted time, delayed treatment, and were forced to spend thousands of dollars on out-of-network care. *Id*. ¶¶ 4, 14, 82, 97, 121, 255.

In sum, Plaintiffs have adequately alleged multiple forms of reliance on Carelon's misrepresentations. Accordingly, Carelon's basis for dismissal of the fraudulent misrepresentation claim fails.

V. PLAINTIFFS STATE A CLAIM FOR NEGLIGENT MISREPRESENTATION

Carelon's lies about its provider network also constitute negligent misrepresentation. "To recover on a theory of negligent misrepresentation, a plaintiff must establish [(1)] that the defendant had a duty to use reasonable care to impart correct information because of some special relationship between the parties, [(2)] that the information was incorrect or false, and [(3)] that the plaintiff reasonably relied upon the information provided." *Grammer v. Turits*, 271 A.D.2d 644,

645 (2d Dep't 2000). Carelon seeks dismissal of the negligent misrepresentation claim, arguing that (1) its relationship with Plaintiffs does not give rise to a duty to impart correct information and (2) Plaintiffs do not sufficiently plead reasonable reliance. Mot. at 16–17. Both arguments are meritless.

First, as explained in Part I, *supra*, Plaintiffs and Carelon are in privity, which, as Carelon concedes, imposes a duty to impart correct information.

Regardless, although privity is sufficient, it is not necessary. The duty exists "where[ever] there is a relationship between the parties such that there is an awareness that the information provided is to be relied upon for a particular purpose by a known party in furtherance of that purpose, and some conduct by the declarant linking it to the relying party and evincing the declarant's understanding of their reliance." *Silvercreek Mgmt., Inc. v. Citigroup, Inc.*, 248 F. Supp. 3d 428, 453 (S.D.N.Y. 2017) (internal quotation marks omitted). *See Powers v. City of Geneva*, 67 Misc. 3d 1220(A) (Sup. Ct. Ontario Cnty. 2020) ("Where sellers voluntarily undertake to provide information to a buyer, even though there is no obligation to do so in an arms length transaction, a duty arises to use reasonable care to impart correct information where reliance on that information is foreseeable and plaintiff reasonably relied upon the information provided."), *aff'd as modified*, 192 A.D.3d 1632 (4th Dep't 2021).[7] All of these elements are present: the

[7] *See also Emerald Town Car of Pearl River, LLC v. Philadelphia Indem. Ins. Co.*, 2017 WL 1383773, at *5 (S.D.N.Y. Apr. 12, 2017) (holding that "insurer … was under a duty to act with care … when it [made] represent[ions] … to Plaintiff" (cleaned up)); *Dornberger v. Metro. Life Ins. Co.*, 961 F. Supp. 506, 546–47 (S.D.N.Y. 1997) (denying insurer's motion to dismiss negligent misrepresentation claim because of insurer's false advertising campaign inducing plaintiff to purchase its insurance); *Greene v. Gerber Prods. Co.*, 262 F. Supp. 3d 38, 75–77 (E.D.N.Y. 2017) (denying Gerber's motion to dismiss negligent misrepresentation claim because consumers alleged reliance on its inaccurate product advertisements); *Amos v. Biogen Idec Inc.*, 28 F. Supp. 3d 164, 170–71 (W.D.N.Y. 2014) (drug manufacturer had duty to impart accurate information to consumers); (*Osuchowski v. Gallinger Real Est.*, 273 A.D.2d 892, 892–93 (4th Dep't 2000) (auctioneer had duty to impart accurate information to purchaser).

Complaint alleges that Carelon furnished misinformation about its provider network directly to Plaintiffs knowing they would rely on it and advising them to do so. Compl. ¶¶ 205, 210, 225–26, 229, 289–90, 302–03, 318, 320, 322, 324, 332. "Given that the determination of whether a special relationship exists is essentially a factual inquiry, these allegations are sufficient to survive the motion to dismiss." *Silvercreek*, 248 F. Supp. 3d at 453 (cleaned up).

Second, Carelon's argument regarding reasonable reliance merely incorporates by reference the reliance argument it made in connection with the fraudulent misrepresentation claim.[8] Mot. at 17. For the reasons stated above regarding the fraudulent misrepresentation claim, Plaintiffs have adequately alleged reasonable reliance.

VI. PLAINTIFFS STATE A CLAIM FOR UNJUST ENRICHMENT

Carelon contends that Plaintiffs cannot state a claim for unjust enrichment because (1) Plaintiffs fail to allege a benefit conferred on Carelon and (2) the claim is duplicative of Plaintiffs' other claims. Mot. at 17–19. But Plaintiffs *have* alleged that Carelon benefited from the lies it told about its provider network, and the law is clear that Plaintiffs may pursue their claim for unjust enrichment in the alternative, and in addition, to their other claims.

A. Plaintiffs Adequately Allege a Benefit Conferred on Carelon

Carelon suggests, in cursory fashion, that Plaintiffs failed to allege any benefit conferred on it. Mot. at 17–18. Not so. Plaintiffs allege that they enrolled in Carelon's plan because of its misrepresentations regarding its provider network "and thereby direct[ed] their medical premiums to the Defendant," which is a clear financial benefit conferred on Carelon. Compl. ¶ 339. *See*

[8] To be clear, Carelon's argument is solely about whether Plaintiffs adequately allege that they relied on its misrepresentations. Carelon does not argue that the alleged reliance was unreasonable.

Unibell Anesthesia, P.C. v. Guardian Life Ins. Co. of Am., 256 A.D.2d 252, 252–53 (1st Dep't 1998) (insurer unjustly enriched by misrepresentations that led to increased premium payments).

Carelon nevertheless argues that Plaintiffs failed to allege "that this payment to Carelon results from or changes with member enrollment," Mot. at 18, but Plaintiffs expressly alleged that "[a] portion of members' premiums are paid to Carelon." Compl. ¶ 244; *see also id.* ¶¶ 327, 338, 341 (explaining that increased membership in the Empire Plan results in increased profits for Carelon). Thus, Plaintiffs' individual decisions to enroll in Carelon's plan provided a monetary benefit to Carelon, as a portion of Plaintiffs' premiums was passed on to Carelon as payment for its services. Plaintiffs also allege that Carelon was able to charge higher premiums "because of its illusorily broad network." *Id.* ¶ 245. In short, Plaintiffs have adequately alleged that their enrollment in Carelon's plan—which resulted from Carelon's misrepresentations—conferred a financial benefit on Carelon.

Alternatively, Carelon implies that Plaintiffs cannot pursue an unjust enrichment claim because Plaintiffs paid their premiums in the first instance to NYSHIP, not Carelon. Mot. at 18. But as Plaintiffs explained in their pre-motion letter, it makes no difference if the premiums were routed through NYSHIP as an intermediary before reaching Carelon; "it does not matter whether the benefit is directly or indirectly conveyed." *Myun-Uk Choi v. Tower Rsch. Cap. LLC*, 890 F.3d 60, 69 (2d Cir. 2018) (cleaned up). Even indirect purchasers of a good or service may assert a claim for unjust enrichment. *Id.*; *Cox v. Microsoft Corp.*, 8 A.D.3d 39, 40 (1st Dep't 2004). Carelon simply ignores these cases, which defeat its suggestion that Plaintiffs cannot pursue an unjust enrichment claim if their premiums went first to NYSHIP before they were sent to Carelon.[9]

[9] Carelon also ignores the fact that premiums were not the only way it benefited from its misconduct. Plaintiffs also allege other ways in which Carelon was unjustly enriched. *See* Compl. ¶¶ 246, 249, 340–42.

B. Plaintiffs' Unjust Enrichment Claim is Not Duplicative

Finally, Carelon contends that Plaintiffs' unjust enrichment claim should be dismissed as duplicative of their contract and tort claims. Mot. at 18–19. This argument (which Carelon did not raise in its pre-motion letter) ignores Second Circuit precedent, which has approved the practice of pleading unjust enrichment claims in the alternative, particularly where, as here, the defendant disputes the existence of a contract between the parties. *See Rynasko*, 63 F.4th at 202 (holding that plaintiff was permitted to pursue claims for breach of contract and unjust enrichment because "[t]he Federal Rules specifically allow pleading in the alternative"); *Newman & Schwartz v. Asplundh Tree Expert Co.*, 102 F.3d 660, 663 (2d Cir. 1996) (unjust enrichment claim was "properly pleaded as such in the alternative"); *see also Transcience Corp. v. Big Time Toys, LLC*, 50 F. Supp. 3d 441, 453 (S.D.N.Y. 2014) (Ramos, *J.*) ("[E]ven though Plaintiffs may not ultimately *recover* under both the breach of contract and unjust enrichment claims, courts in this Circuit routinely allow plaintiffs to *plead* such claims in the alternative." (emphases in original) (collecting cases)). Moreover, "a claim for unjust enrichment is not duplicative of a breach of contract claim where," as here, "the plaintiff alleges that the contracts were induced by fraud." *Pramer S.C.A. v. Abaplus Int'l Corp.*, 76 A.D.3d 89, 100 (1st Dep't 2010).

Finally, Plaintiffs' unjust enrichment claim is not duplicative because it calls for distinct damages: disgorgement of all premiums paid to Carelon. *See In re Amla Litig.*, 282 F. Supp. 3d 751, 767 (S.D.N.Y. 2017) (noting that, "in the context of an unjust enrichment claim, a full refund may be available even where the product does ultimately confer a benefit"); *NetJets Aviation, Inc. v. LHC Communs., LLC*, 537 F.3d 168, 175 (2d Cir. 2008) (explaining that claims are not duplicative if they allow for distinct damages).

Thus, in sum, Plaintiffs are entitled to pursue their claim for unjust enrichment both as an alternative to and in addition to their other claims.

CONCLUSION

For the foregoing reasons, Carelon's motion to dismiss should be denied in its entirety. If the Court dismisses any of Plaintiffs' claims in whole or in part, Plaintiffs respectfully request leave to amend. *See Loreley Financing (Jersey) No. 3 Ltd. v. Wells Fargo Secs., LLC*, 797 F.3d 160, 190–91 (2d Cir. 2015) (explaining that plaintiffs should ordinarily be granted leave to amend if Court grants motion to dismiss).

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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 first day of October 2025.

/s/ Jacob Gardener