**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF NEW YORK**

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| JOSEPH GREENE, PAMELA MAZZA, and DEBORAH SCHUTT on behalf of themselves and all others similarly situated,<br><br>Plaintiffs,<br><br>v.<br><br>HEALTHFIRST PHSP, INC.,<br><br>Defendant. | Case No. 25-cv-09058 (ER) |

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF HEALTHFIRST PHSP, INC.'S MOTION TO DISMISS THE SECOND AMENDED COMPLAINT**

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Defendant Healthfirst PHSP, Inc. ("Healthfirst"), by and through its undersigned counsel, Sher Tremonte LLP, respectfully submits this reply in further support of its Motion to Dismiss the Second Amended Complaint (the "Complaint" or "SAC"), ECF Nos. 22-24.[1]

## PRELIMINARY STATEMENT

Plaintiffs' opposition reveals that their first cause of action is a contrivance to support federal court jurisdiction. Plaintiffs disregard passages of their own pleading while dressing up the traditional subjects of state healthcare policy as first impressions of federal law. To assert this claim, Plaintiffs must hyper-extend the doctrine of third-party beneficiaries, usurping contract rights that belong to New York State. And even if all these issues were ignored, Supreme Court precedent precludes private enforcement of a federal statute beyond what Congress has authorized. For several independent reasons, this action should be dismissed.

First, no federal issue here is "necessarily raised." Plaintiffs ask that the Court disregard non-federal obligations, brandishing their role as "master of the complaint." But their own pleading and its exhibit expressly invoke non-federal requirements, including in the relevant cause of action.

Second, Plaintiffs' jurisdictional theory flunks two more *Grable* requirements: no federal issue is substantial, and this case invades the normal turf of state courts. Plaintiffs identify no federal issue in their fact-bound claims that will clarify federal law. Even the relevant federal statutes (as Plaintiffs concede) are largely enforced by the *states*, and they overlap with state laws and contract requirements. This action is not a federal case, and it belongs in state court.

Third, Plaintiffs claim to be third-party beneficiaries of a *government* contract, but their Opposition obfuscates the heightened scrutiny that follows. Plaintiffs must show that third-party enforcement is consistent not only with the contract, but also with its enabling legislation. Here,

[1] The undersigned refers to Healthfirst's memorandum of law in support of its motion to dismiss, ECF No. 23, as "Mot.," and Plaintiffs' memorandum of law in opposition, ECF No. 28, as "Opp."

the state contracts are part of an extensive state-law certification and regulatory scheme. State policy does not contemplate millions of enrollees assuming the rights of New York State in court. State agencies have opposed such prospects as threatening to "upend the legislative scheme."

Fourth, Plaintiffs' purported federal claim is an impermissible end-run around Congress's chosen enforcement remedies. Plaintiffs' response is largely a *non sequitur*, citing ERISA laws that do not apply to Plaintiffs. They also urge a different result on the ground that the relevant federal laws are principally enforced by state regulators. But whether Congress enlists federal or state regulators, a civil action by private individuals is no less an end-run, warranting dismissal.

## ARGUMENT

### I. PLAINTIFFS FAIL TO ESTABLISH SUBJECT MATTER JURISDICTION

Plaintiffs focus their jurisdictional arguments exclusively on their first cause of action, conceding, as Healthfirst argued, Mot. 13-16, that no remaining claim arises under federal law.

#### A. No Federal Issue in Plaintiffs' First Cause of Action Is Necessarily Raised

Plaintiffs' first cause of action does not "necessarily raise" a federal issue, flunking the first requirement of *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308 (2005). The claim is for breach of the QHP and Essential Plan state contracts, which (Plaintiffs do not dispute) extensively address network adequacy and provider directories. Mot. 10-11 & n.8.

Ironically, Plaintiffs' lead argument is that federal issues are "necessarily raised" as a matter of Plaintiffs' prerogative. The Court should disregard the contract's non-federal requirements, they assert, because a plaintiff is "master of the complaint," free to focus on provisions incorporating federal law. Opp. 6. Plaintiffs misconstrue the doctrine, arising from removal cases, that claimants may *avoid* pleading federal claims, thereby defeating jurisdiction. *See, e.g.*, *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 398-99 (1987) (discussing "well-pleaded complaint rule," referencing plaintiff as "master of the complaint" in avoiding federal jurisdiction). This principle has no

relevance here. Plaintiffs do not ignore state law: they plead an expressly state-law claim for breach of contract, while disregarding the contracts' most salient provisions, to manufacture the "necessity" of a federal issue. Plaintiffs claim that Healthfirst breached its state contracts by failing to maintain an adequate network or accurate provider directories. Even a cursory review of those contracts dispels any notion that this claim "necessarily raises" federal law.

As Healthfirst has demonstrated, moreover, even in the pleading, Plaintiffs' claim is not confined to federal law. Non-federal requirements are found even in the allegations *within the first cause of action.* Mot. 11 (citing SAC ¶ 220, alleging Healthfirst "failed to deliver" on the contracts that required "compliance with federal and state laws"); Mot. 10 (citing SAC ¶¶ 224, 226, alleging breaches by Healthfirst without mentioning federal law). The Complaint elsewhere references state-law obligations, Mot. 10, attaches the entire Essential Plan contract as an exhibit, Mot. 10-11, and incorporates all allegations by reference into the first cause of action, SAC ¶ 213. The Court need not accept assurances of "necessity" under *Grable* that are refuted by the Complaint or its exhibits. *See AMTAX Holdings 227, LLC v. CohnReznick LLP*, 736 F. Supp. 3d 169, 181 (S.D.N.Y. 2024) (federal issue not necessarily raised because it was "clear from the documents attached to . . . complaint" that inquiry depended upon contractual language rather than federal statute), *aff'd on other grounds*, 136 F.4th 32 (2d Cir. 2025). Plaintiffs' disavowal of non-federal requirements is a contrivance. Plaintiffs plead theories of breach independent from the violation of federal law, and a federal issue is not "necessarily raised." Mot. 9-10.[2]

[2] Plaintiffs state the relevant contracts do not refer to the state law counterpart for mental health parity, Opp. 6 n.2, but this is irrelevant. The alleged violation of federal parity laws is based on the *same conduct* as alleged violations of directory accuracy and network adequacy requirements set forth in the terms of the contract and state and federal law. Federal parity laws therefore cannot provide an independent, much less *necessary*, basis for breach of contract.

**B. The Federal Issues Raised by Plaintiffs Are Not "Substantial," and Federal Jurisdiction Would Upset the Balance of Federal-State Power**

Plaintiffs purport to identify two ways in which resolution of the federal issues here will be "substantial" – by promoting uniform federal standards and/or by their impact on a national system – but neither withstands scrutiny.

First, Plaintiffs fail to demonstrate that this case involves federal legal issues of forward-looking significance. Many of their arguments on that point reveal that this case will have little import outside New York, the only state in which Healthfirst has members.[3] Pike Decl. ¶ 5, ECF No. 24. Plaintiffs assert that their claims are not so fact-bound because the alleged federal violations relate "only to Healthfirst's conduct," not the particular circumstances of each plaintiff. Opp. 9. This argument ignores half the story, but even the remaining half is mired in factual detail: the adequacy of Healthfirst's network of thousands of providers, alleged errors in its extensive directories, and the parity of Healthfirst's mental health benefits versus its medical benefits. Such a claim is unsuitable for federal jurisdiction. *See Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 701 (2006); *cf. Tantaros v. Fox News Network, LLC*, 12 F.4th 135, 146 (2d Cir. 2021) (finding jurisdiction where "[t]he federal question is a purely legal one"); *New York ex rel. Jacobson v. Wells Fargo Nat'l Bank, N.A.*, 824 F.3d 308, 318 (2d Cir. 2016) (jurisdiction appropriate where claim raised "threshold question *of law* relating to mortgage-backed securities *generally*" (emphasis added)). Plaintiffs assert their claim will "illuminate the federal healthcare rights of every American," Opp. 8, but have never explained how.

Under *Grable*, there is nothing substantial in the conclusion identified by Plaintiffs: whether the defendant's conduct was "consistent with its regulatory responsibilities." Opp. 10

[3] *See, e.g.*, Opp. 8 (noting that the relevant contracts are "New York State's model contracts for all insurers" on "the state marketplace"); *id.* 11 (citing the "economic scale of Healthfirst's failings").

(quoting *Pritika v. Moore*, 91 F. Supp. 3d 553, 558 (S.D.N.Y. 2015)). *Pritika* stands for the opposite proposition, holding that whether the defendant ultimately violated the FCPA was *not* a substantial issue, including because it did "not implicate the validity of the FCPA." *Id.* at 559. Plaintiffs assert they are raising "issues of first impression," Opp. 8-9, but substantiality is not established by "novel federal question." *Merrell Dow Pharm. Inc. v. Thompson*, 478 U.S. 804, 817 (1986); *see also Pritika*, 91 F. Supp. 3d at 560 (rejecting substantiality of federal courts making "the first authoritative statements" on an issue).

Second, Plaintiffs argue that their claim implicates issues of national importance, but this rests on their misreading of *NASDAQ OMX Group, Inc. v. UBS Sec., LLC*, 770 F.3d 1010 (2d Cir. 2014). Plaintiffs focus on its finding that the dispute involved fundamental exchange functions, Opp. 10 (citing *NASDAQ*, 770 F.3d at 1027), but the more prominent point was that the NASDAQ and other securities exchanges were inherently national in character. *See id.* at 1024 (describing securities exchanges as "an important national asset," "'an indicator of our national economic health,'" and "'critical components of the National Market System'"). Under *NASDAQ*, the substantial federal issue existed because the dispute affected a singular, national system.

*NASDAQ* is inapposite because there is no "national system" of health insurance coverage, and no comparable substantial federal interest. Health insurers operate in state-wide markets, and are chiefly regulated by the states, including the health plans at issue here. *UnitedHealthcare of New York, Inc. v. Lacewell*, 967 F.3d 82, 87 (2d Cir. 2020) (quoting HHS notice under ACA that "'States are the primary regulators of their insurance markets'"); *NYS Health Maintenance Org. Conf. v. Curiale*, 64 F.3d 794, 803 n.25 (2d Cir. 1995) (describing state actions involving health care as "traditional exercises of state power"). Thus, the Supreme Court has found that a health benefits dispute, even where a health plan was federally created for federal health employees,

"cannot be squeezed into the slim category *Grable* exemplifies." *Empire Healthchoice*, 547 U.S. at 701; *see also Dominion Pathology Lab'ys, P.C. v. Anthem Health Plans of Virginia, Inc.*, 111 F. Supp. 3d 731, 738 (E.D. Va. 2015) (ACA's overall importance "does not make every issue touching the ACA 'an important federal issue'").

Indeed, Plaintiffs *concede* that the federal laws at issue here are monitored on a state-by-state basis: "[r]ather than centralizing oversight of these laws in a single federal agency, Congress has *dispersed* oversight, *granting authority to the states to monitor compliance in their marketplaces*." Opp. 23 (emphasis added). And none of those federal laws afford Plaintiffs a private right of action. *See* Mot. 21-24. In other words, Congress has already concluded that these provisions do not implicate such distinct federal interests as to upset the federal-state balance of power in favor of federal court jurisdiction. *See Merrell Dow*, 478 U.S. at 814 (lack of private right of action was "tantamount to a congressional conclusion" that alleged violation of statute was "insufficiently 'substantial' to confer federal-question jurisdiction").

The prominent role of state law is fatal to Plaintiffs' position, both on substantiality and on the fourth *Grable* requirement regarding the federal-state balance of judicial power. On similar grounds, numerous courts have rejected federal jurisdiction based on the Affordable Care Act. *See Hartland Lakeside Joint No. 3 Sch. Dist. v. WEA Ins. Corp.*, 756 F.3d 1032, 1035 (7th Cir. 2014) (rejecting federal jurisdiction based on ACA, finding that federal law "gives states preeminence in the domain of insurance regulation," and "[m]ost insurance disputes arise under state law and are resolved in state court"); *Texas Med. Res., LLP v. Molina Healthcare of Texas, Inc.*, 356 F. Supp. 3d 612, 618 (N.D. Tex. 2019) (agreeing that "insurance is an area of law that the federal government has largely left to the states to regulate" and finding jurisdiction "would disturb the balance of federal and state judicial responsibilities") (internal quotations omitted); s*ee also Desai*

*v. CareSource, Inc.*, 2019 WL 1109568, *5 (S.D. Ohio 2019) (remanding class action against health plan based on federal standards for network adequacy and provider directories).

## II. PLAINTIFFS ARE NOT INTENDED THIRD-PARTY BENEFICIARIES

Plaintiffs agree with Healthfirst that the Medicaid Managed Care contract does not allow for enforcement by third parties, Opp. 15 n.5, and now base their third-party beneficiary claim solely on Healthfirst's QHP and Essential Plan contracts with New York State.

### A. The Contracts and State Policy Do Not Support Third-Party Enforcement

Plaintiffs' argument for third-party enforcement is premised on the wrong legal standard. For *government contracts*, courts permit third-party enforcement only where it would not "contravene the policy of the law authorizing the contract or prescribing remedies for its breach." *Fourth Ocean Putnam Corp. v. Interstate Wrecking Co.*, 66 N.Y.2d 38, 44 (1985) (citing Restatement (Second) of Contracts § 313(1) (1981)); *see also* Mot. 18 (collecting cases on "heightened standard" for government contracts).[4]

Plaintiffs cannot meet this standard because, as explained above, private enforcement would be inconsistent with the legislative scheme underlying the contracts between Healthfirst and New York. The laws creating QHPs and Essential Plans, including the ACA, contemplate enforcement of compliance standards by the federal government and by participating states. *See* 42 U.S.C. § 300gg-22; *see also* N.Y. Pub. Health L. § 268-d(1)(b)(iv) (describing certification

[4] Plaintiffs misstate New York law when they omit this element. They cite a passage from *Whitehaven S.F., LLC v. Spangler*, 633 F. App'x 544 (2d Cir. 2015), in which the court merely recounted the New York Attorney General's position. *Id.* at 547. Elsewhere, the court acknowledged that, for government contracts, a "more stringent test" applies. *Id.*

Thus, in each of the government contract cases cited by Plaintiffs, the court looked beyond contractual intent to legislative policy. *See Koch v. Consol. Edison Co.*, 62 N.Y.2d 548, 558-59 (1984) (permitting third-party beneficiary claims in part based on "[t]he underlying legislation"); *Gonzalez v. St. Margaret's House Hous. Dev. Fund Corp.*, 620 F. Supp. 806, 810 (S.D.N.Y. 1985) (analyzing underlying purpose of Section 8 program); *McNeill v. N.Y.C. Hous. Auth.*, 719 F. Supp. 233, 249 (S.D.N.Y. 1989) (same).

standards of health plans offered on the New York Marketplace, including that they comply with network adequacy requirements); *see also supra* at 5-6. None of these laws contemplate private civil enforcement, and Plaintiffs assert no claims directly under these statutes.

The State's policy is decidedly against private civil claims in this area. New York agencies have explicitly opposed private enforcement of such statutes by individual insureds. *See* Amicus Brief of N.Y.S. Dep't of Fin. Serv. at 3, *Doe v. Oxford Health Ins.*, No. 17-cv-316 (E.D.N.Y. Oct. 25, 2017) (stating position of New York Department of Financial Services that private enforcement of mental health parity law would "upend the legislative scheme"). New York courts have refused to imply a private cause of action, for example, under New York's mental health parity law. *See Kamins v. United Healthcare Ins. Co. of New York, Inc.*, 171 A.D.3d 715, 717 (2d Dep't 2019); *see also Bushell v. UnitedHealth Group Inc.,* 2018 WL 1578167, at *2-3 (S.D.N.Y. Mar. 27, 2018).

Plaintiffs also have not overcome the fact that the State contemplated Plaintiffs would have their own separate agreement with Healthfirst, with an integration clause. Mot. 19-20. Plaintiffs argue these clauses cannot "extinguish" their separate rights, Opp. 17-18, but this misses the point.[5] These fully integrated subscriber contracts were drafted by the State and required as part of the very government contracts that Plaintiffs now seek to enforce. Mot. 19. The State thus intended that Plaintiffs be able to enforce their own contracts, and not those of the State.[6] For the same reason, contrary to Plaintiffs' argument, Opp. 15, there was no need for the QHP and Essential

[5] On this point, too, Plaintiffs cite cases that did not involve government contracts backed by regulatory remedies, *see Albert v. DistroKid LLC*, 2026 WL 710041, at *10-12 (S.D.N.Y. Mar. 13, 2026) (contract between two private corporations), or that actually rejected a third-party beneficiary claim, *see Haier Am. Trading, LLC v. Samsung Elecs., Co.*, 2018 WL 4288617, at *15 (N.D.N.Y. Sept. 7, 2018).

[6] *See* Pike Decl. ¶ 13 (providing link for New York State model contracts, which includes model subscriber contract providing: "This [Contract; Policy], together with the attached Schedule of Benefits, applications and any amendment or rider amending the terms of this [Contract; Policy], constitute the entire agreement between You and Us.").

Plan contracts to include an express disclaimer of third-party beneficiary status, because such status was effectively obliterated by the subscribers' separate, fully-integrated contract. In contrast, the Medicaid Managed Care State contract had to include an express disclaimer because those plans do not have direct contracts with subscribers. Pike Decl. ¶ 10. Moreover, Plaintiffs are wrong to seek favorable inferences from the absence of a disclaimer. Opp. 15. Intended enforcement by third parties must be "clearly evidence[d]," Mot. 20, not presumed from silence. There is no such clear evidence here. In fact, all evidence points to the opposite conclusion.

**B. Plaintiffs' Claim Is an End-Run Around Congress's Chosen Enforcement Scheme**

Faced with *Astra USA, Inc. v. Santa Clara County*, 563 U.S. 110 (2011), and its progeny, Plaintiffs primarily rely on a statute that has no conceivable relevance to this case. Plaintiffs argue that the No Surprises Act and the MHPAEA are incorporated into ERISA, which in turn provides for private rights of action. Opp. 19-22. It is undisputed, however, that Congress has not afforded a private civil remedy to *these Plaintiffs*, who do not allege they are members of a group healthcare plan or otherwise covered by ERISA. On a motion to dismiss, courts cannot look to theoretical claims of non-class members, or even to claims of non-named putative class members—they must look at the claims asserted by the named plaintiffs. *See Ayala v. Looks Great Servs., Inc.*, 2015 WL 4509133, at *10 (E.D.N.Y. July 23, 2015) ("[T]he Court cannot . . . look to the allegations by members of a proposed class in assessing the validity of the named Plaintiffs' claims for purposes of the present motion.").

Separately, Plaintiffs argue their claims fall outside *Astra* because the contract terms here go beyond what is required by federal law. Opp. 22 (citing *Ortiz v. Consol. Edison Co.*, 2024 WL 3086161, at *21 (S.D.N.Y. June 7, 2024), *report & recommendation adopted*, 2024 WL 3105686 (S.D.N.Y. June 24, 2024); *In re Anthem, Inc. Data Breach Litig.*, 162 F. Supp. 3d 953, 1010 (N.D. Cal. 2016)). In fact, Healthfirst's State contracts simply list federal statutes and require compliance.

SAC Ex. 1, App'x D, at 56. They do not extend any statute beyond its terms. *Ortiz* does not suggest an exception to *Astra*; it did not discuss that case at all. *Anthem* distinguished *Astra* in ways that highlight its similarity to Plaintiffs' claims: namely, the *Astra* contracts were "form agreements" with no negotiable terms, and incorporated statutory requirements without departing from federal standards. 162 F. Supp. 3d at 1010. Those features are apt descriptions of the QHP and Essential Plan model contracts offered by New York State.

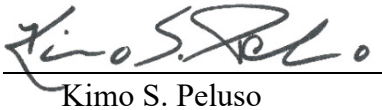
Finally, Plaintiffs attempt to distinguish *Astra* on grounds that cannot matter. They point out that the federal laws here are enforced primarily by state governments, rather than the single federal agency in *Astra*. Opp. 23. But whether Congress granted enforcement authority to states or federal agencies, the point is unchanged: Congress did *not* give that authority to private civil claimants. *Astra* remains controlling here: the lack of a statutory private rights of action is incompatible with Plaintiffs' enforcing those same statutes through state law claims.

## CONCLUSION

The Court should dismiss the entire Complaint pursuant to Rule 12(b)(1) or, alternatively, dismiss the first cause of action pursuant to Rule 12(b)(6) and decline to exercise supplemental jurisdiction over the remaining claims.

Dated: New York, New York
August 6, 2026

SHER TREMONTE LLP



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**CERTIFICATE OF COMPLIANCE**

The undersigned counsel of record for Defendant Healthfirst PHSP, Inc. certifies that the foregoing brief complies with the 10-page limit set forth in Rule 2(B)(i) of the Court's Individual Practices.

Dated: New York, New York
August 6, 2026

Respectfully submitted,

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