UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

MICHELLE MAZZOLA, individually and as mother of BABY DOE; GUY MAZZOLA, individually and as father of BABY DOE; AMEC, LLC; and LISA KULLER, on behalf of themselves and all others similarly situated, Plaintiffs, v. ANTHEM HEALTH PLANS, INC., CARELON BEHAVIORAL HEALTH, INC., and ELEVANCE HEALTH, INC., Defendants.	Civil Action No. 3:25-cv-01433-OAW

REPLY MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

ARGUMENT

I. ELEVANCE IS NOT SUBJECT TO PERSONAL JURISDICTION

Plaintiffs argue the Complaint's allegations establish jurisdiction over Elevance under Connecticut's long-arm statute and satisfy due process. Opp. at 8–10. Plaintiffs are wrong.

First, Plaintiffs are simply incorrect that Connecticut law permits finding an alter ego relationship for jurisdictional purposes without a showing of fraud. Opp. at 9. The case on which they base their argument, *Star Child II, LLC v. Lanmar Aviation, Inc.*, No. 3:11-cv-1842, 2013 WL 1103915 (D. Conn. Mar. 16, 2013), relies on a Second Circuit decision applying *New York* law, rather than Connecticut law. Further, the language *Star Child* purports to quote—that "[e]stablishing the exercise of personal jurisdiction over an alleged alter ego requires application of a less stringent standard than that necessary to pierce the corporate veil for purposes of liability"—appears nowhere in the decision cited. *See id.* at *9 (purporting to quote *Marine Midland Bank, N.A. v. Miller*, 664 F.2d 899, 904 (2d Cir. 1981)). Regardless, Connecticut courts apply the same standard to piercing the corporate veil in the jurisdictional context as the liability context. *See Hersey v. Lonrho, Inc.*, 73 Conn. App. 78, 86, 807 A.2d 1009, 1015 (2002).

Second, Plaintiffs are wrong that their allegations Elevance was "involved" in claimed fraudulent statements by Anthem are adequate to pierce the corporate veil. Piercing the corporate veil requires a showing of "exceptional circumstances" constituting an improper use of the corporate form." *Id* at 1015-1016. That standard requires factual allegations showing Anthem was a "mere shell" that Elevance "*used primarily* as an intermediary to perpetrate fraud." *Id*. (emphasis added). Plaintiffs do not and cannot allege such facts, and they thus cannot establish this "key" showing necessary to pierce the corporate veil under Connecticut law. *Id*.[1]

[1] Although the Court need not consider whether due process supports jurisdiction because Connecticut's long-arm statute is not satisfied, *see Savage v. Scripto-Tokai Corp.*, 147 F. Supp. 2d 86, 90 (D. Conn. 2001), Plaintiffs' argument

II. THE MAZZOLAS' AND AMEC'S STATE-LAW CLAIMS ARE PREEMPTED

Plaintiffs concede the Mazzolas' and Amec's health plan is governed by Employee Retirement Income Security Act of 1974 (ERISA), codified as 29 U.S.C. §§ 1001–1461, but they nevertheless claim they can pursue certain state law claims because those state law claims are based on violations of "generally applicable" legal duties. Opp. at 10–11 & n.2. That is incorrect.

Plaintiffs argue their state-law claims "have nothing to do with ERISA" and "address[] legal protections distinct from their rights under their ERISA plan." Opp. at 11–12. But ERISA preempts both alternative means of enforcing ERISA plans, *Aetna Life Ins. Co. v. Borges*, 869 F.2d 142, 146 (2d Cir. 1989), and claims where an ERISA Plan "is a critical factor in establishing liability," *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 139–40 (1990). ERISA thus preempts claims that "concern the existence or extent of benefits under an [ERISA plan]," or where "absent the ERISA plan, [the plaintiff] would have no cause of action against the [d]efendants." *Gianetti v. Blue Cross & Blue Shield of CT., Inc.*, 351 F. App'x 520, 522-523 (2d Cir. 2009).

Plaintiffs' CUTPA, fraud, negligent misrepresentation, and unjust-enrichment claims are all based on Plaintiffs' allegations that Defendants misrepresented the network of providers from whom Plaintiffs could receive treatment using their in-network benefit under the terms of their plans. *See* Compl. ¶ 383 (CUTPA) 383–84, 414–45 (misrepresentation); 421, 423, 425 (unjust enrichment). Those claims concern the existence or extent of benefits—in-network coverage—under Plaintiffs' health plans, and Plaintiffs would have no cause of action against Defendants but for those plans. These claims are preempted as to the Mazzolas and Amec. *See Gianetti*, 351 F. App'x at 522 ("fraud, misrepresentation, and CUTPA claims [that] concern the existence or extent of benefits" under ERISA plan are preempted); *Geller v. Cnty. Line Auto Sales, Inc.*, 86 F.3d 18,

---

that Elevance has sufficient contacts to satisfy due process is likewise based on their alter ego theory, *see* Opp. at 9–10, and fails for the same reason.

22 (2d Cir. 1996) (unjust enrichment preempted because restitution available under ERISA).

Plaintiffs' cited authorities are inapposite, as they involve claims by or against non-contracted, out-of-network providers that are not parties to or subject to ERISA-governed plans, and the claims accordingly did not relate to benefits under, or rely on the existence of, an ERISA plan. *See, e.g. Guardian Flight LLC v. Aetna Life Ins. Co.*, 789 F. Supp. 3d 214, 238 (D. Conn. 2025) (non-contracted air ambulance provider); *Cigna Health & Life Ins. Co. v. BioHealth Lab'ys, Inc.*, No. 3:19-CV-01324 (JCH), 2025 WL 1450727, at *1 (D. Conn. May 20, 2025) (out-of-network labs); *NEMS PLLC v. Harvard Pilgrim Health Care of Connecticut Inc.*, 615 F. Supp. 3d 125, 142 (D. Conn. 2022) (out-of-network hospital); *Geller*, 86 F.3d at 22 (non-employee).

III. KULLER FAILS TO STATE A CLAIM FOR BREACH OF CONTRACT OR BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

Plaintiffs concede Kuller must plead breach of a contractual obligation to establish a breach of contract or breach of the covenant of good faith and fair dealing. Opp at 14. But Plaintiffs do not allege the existence and breach of any specific contractual provision. Opp. at 14–18.

Kuller contends Anthem breached her subscriber agreement because: (1) the provider directory allegedly contained inaccurate provider information; and (2) the provider directory allegedly did not provide a sufficient number of behavioral health providers. But Plaintiffs cite only provisions of Kuller's subscriber agreement that identify the role of the provider directory as a source of provider information or require Anthem to confirm or update provider information on certain intervals. Opp. at 15 (citing Compl. ¶ 257 (confirm provider information every 90 days); ¶ 258 (requiring compliance with applicable law); ¶¶ 47, 49 (update provider information every 30–90 days)). Plaintiffs do not allege Anthem failed to confirm or update any provider's information within an applicable 30- or 90-day period. And Plaintiffs identify no contractual provision requiring Anthem to provide a particular number or level of behavioral health providers.

Plaintiffs fail to identify any provision of Kuller's subscriber agreement that Anthem breached.

As to Elevance and Carelon, Plaintiffs contend they adequately alleged an enforceable contract based on their claim that Elevance and Carelon are alter egos of Anthem. Opp. at 15–18. As discussed *supra*, Plaintiffs have not made—and cannot make—the requisite showing to pierce the corporate veil under Connecticut law, and accordingly no contractual privity exists.

IV. PLAINTIFFS FAIL TO STATE A CLAIM FOR MISREPRESENTATION

Plaintiffs argue that their fraud claims are adequately alleged under Rule 9(b) and that they have adequately alleged Kuller's reliance on the purported fraudulent statements. They are wrong.

A. *Plaintiffs' Allegations Lack Required Specificity*

Plaintiffs claim their fraud allegations satisfy Rule 9(b)'s specificity requirement because they (1) need not "disaggregate" statements by Defendants, and (2) allege the misrepresentations are continuously made and Defendants knew the representations were false. Opp. at 18–20.

Plaintiffs rely on *Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC*, 797 F.3d 160 (2d Cir. 2015), to argue that they need not separately identify the speaker of claimed misstatements. Opp. at 18. But *Loreley*'s analysis hinges on the particular nature of securities offerings and the entities involved, distinguishing between "statements made in a [securities] offering document"—for which group pleading is permissible—and "other oral and written statements made outside the offering documents themselves." *Id.* at 172. *Loreley* thus does not excuse Plaintiffs from identifying the specific speaker of a claimed fraudulent statement not made in a securities offering document. Plaintiffs' failure to identify the speaker of purportedly fraudulent statements is thus fatal to their claims. *See Mills v. Polar Molecular Corp.*, 12 F.3d 1170, 1175 (2d Cir. 1993).

Plaintiffs' assertion that they adequately pleaded the time and place of alleged misrepresentations is also flawed. Plaintiffs point only to their allegation that "all of these misrepresentations" are "currently being made," were "made before" and "throughout Plaintiffs'

enrollment." Opp. at 19 (citing Compl. ¶ 15). But an allegation that all misrepresentations were always made and continue to be made does not identify how and when any particular misrepresentation was made *to Kuller*. Plaintiffs' failure to plead these facts is fatal to their claim.

Finally, Plaintiffs have not alleged Defendants' knowledge of the falsity because Plaintiffs do not identify any specific statement that a particular Defendant knew was false at the time the statement was made. Rather, Plaintiffs plead only general allegations: that "[a]t all relevant times, all Defendants knew that Anthem's representations and omissions regarding their directory of behavioral health providers and coverage of behavioral health care were grossly inaccurate, deceptive, and misleading," or that "Defendants' intentionally deceived Plaintiffs" or "willfully and knowingly made the fraudulent misrepresentations and omissions alleged herein." Opp. at 19 (citing, *e.g.*, Compl. ¶¶ 303, 396, 410). Those allegations do not establish any Defendant's knowledge that—or how—a specific representation was false when made, and are insufficient to support a fraud claim. *See Pospisil v. Pospisil*, 59 Conn. App. 446, 450, 757 A.2d 655, 658 (2000).

B. Plaintiffs Fail to Allege Reliance

Plaintiffs also fail to establish reliance on a false statement. *See Simms v. Seaman*, 308 Conn. 523, 548, 69 A.3d 880, 894 (2013) (reliance on false representation necessary to establish fraud). Plaintiffs point only to generalized statements that they relied on "implicit and explicit representations by Anthem that the provider directory was robust and accurate," without identifying any particular statement that they contend was false (with the requisite specificity as to time, place, speaker, etc). Opp. at 20 (citing ¶¶ 7, 196–200; *see also* Compl. ¶¶ 95, 302, 405, 416, 420 (general allegations of reliance). Those allegations do not identify the purportedly false statements, or how and when any Plaintiff encountered them. They are, accordingly, "conclusory," because they "they do not explain how or why the plaintiffs relied on the allegedly false [statements]." *Stuart v. Freiberg*, 316 Conn. 809, 828, 116 A.3d 1195, 1207 (2015). Plaintiffs

fail to allege *actual reliance* on specific false statements, and their misrepresentation claims fail.

V. PLAINTIFFS FAIL TO STATE A CLAIM UNDER CUTPA

Plaintiffs offer no response to Defendants' argument that they cannot state a CUTPA claim for purported violations of Conn. Gen. Stat. § 38a-488b or § 38a-477h, Compl. ¶¶ 386–94. *See* Opp. at 20–22. Plaintiffs' CUTPA claim should be dismissed on these grounds.

As to Plaintiffs' allegation of fraud under Conn. Gen. Stat. § 38a-816 , that claim fails for the same reasons as Plaintiffs' common-law fraud claims. Plaintiffs contend *Davis v. Angelcare USA, LLC*, 727 F. Supp. 3d 99, 134 (D. Conn. 2024), establishes that "CUTPA claims in federal court need not meet the heightened pleading standards of Rule 9(b)." Opp. at 22. But *Davis* misreads *Tatum v. Oberg*, 650 F. Supp. 2d 185, 195 (D. Conn. 2009), which explains that, because "CUTPA claims need not contain the elements of fraud[,] . . . CUTPA claims brought in federal court only must satisfy Rule 9(b) *if such claims are based on fraud allegations*." *Id*. at 195 (emphasis added); *accord Lentini v. Fid. Nat. Title Ins. Co. of New York*, 479 F. Supp. 2d 292, 298 (D. Conn. 2007) (CUTPA claims that "rely on affirmative statements or omissions involving fraud or mistake" subject to Rule 9(b)). Because Plaintiffs' CUTPA claim is based on the allegations Defendants "falsely represent[ed]" information about its provider network and "intentionally deceived" Plaintiffs, Compl. ¶¶ 384, 396, that claim is subject to Rule 9(b).

VI. PLAINTIFFS FAIL TO STATE A CLAIM FOR UNJUST ENRICHMENT

Plaintiffs next contend their unjust enrichment claim is adequately pleaded. Opp. at 22–24. It is not. Unjust enrichment requires allegations that a defendant "benefited from the transaction or has received something of value" the defendant unjustly retains. *See Garwood & Sons Const. Co. v. Centos Assocs. Ltd. P'ship*, 8 Conn. App. 185, 187, 511 A.2d 377, 379 (1986).

As to Elevance and Carelon, Plaintiffs contend they "clearly allege Carelon and Elevance received monetary benefits from Plaintiffs' decision to enroll" in Anthem plans. Opp. at 22–23.

But the allegations of the Complaint do not establish that *enrollment itself* results in a benefit to Elevance or Carelon. Rather, Plaintiffs allege Anthem makes payments to Carelon and Elevance based Anthem's profits, not enrollment. *Id.* ¶ 225. The argument that Elevance and Carelon benefitted from "Plaintiffs' decision to enroll" in Anthem plans is belied by those allegations, and Plaintiffs accordingly do not adequately plead unjust enrichment against Elevance and Carelon.

As to Anthem, Plaintiffs argue their unjust enrichment claim is not subject to dismissal, even though they incorporate their allegations of breach of contract into that unjust enrichment claim. Opp. at 23–24. Not so. Under Connecticut law, the "lack of a remedy under a contract is a *precondition to recovery* based on unjust enrichment." *Piccolo v. Am. Auto Sales, LLC*, 195 Conn. App. 486, 499, 225 A.3d 961, 970 (2020) (emphasis added). Thus, a claim for unjust enrichment incorporating allegations the defendant breached a contract on the same subject matter is legally deficient because the allegations show the right to pursue contract remedies. *See id.*

Plaintiffs argue this is merely a procedural rule and thus not applicable in federal court. Opp. at 23–24. But Connecticut law makes clear this is a substantive requirement of its unjust enrichment doctrine: an unjust enrichment claim that alleges the existence and breach of a contract is "legally insufficient" and "cannot lie," *Whitby Sch., Inc. v. Grenaille*, No. CV030195602, 2003 WL 23191957, at *2 (Conn. Super. Ct. Dec. 29, 2003), because the lack of contractual remedy is a "precondition" to a viable unjust enrichment claim, *Piccolo*, 195 Conn. App. at 499. That substantive limitation on the facts that can be pleaded in an unjust enrichment claim is applicable in federal court under *Erie*. *See Gasperini v. Ctr. for Humanities, Inc.*, 518 U.S. 415, 427 (1996).

Plaintiffs ask for leave to amend to correct this defect in their pleading. Opp. at 24. But Plaintiffs could have corrected this defect in response to Defendants' initial motion to dismiss and chose not to. The Court should decline to offer them a *third* bite at the apple.

VII. PLAINTIFFS' ERISA CLAIMS AGAINST ELEVANCE AND CARELON FAIL

Plaintiffs argue their ERISA claims against Elevance and Carelon can proceed even though neither is party to any Plaintiff's ERISA-governed plan. Opp. at 25–27. Plaintiffs contend their claims are viable because Elevance or Carelon *could be* "sued as a plan administrator" if they "control[] the distribution of funds and decide[] whether or not to grant benefits" or are fiduciaries of the plan. Opp. at 25. But Plaintiffs have not pleaded that Elevance and Carelon are "plan administrators, trustees of the plan, or claims administrators that exercise total control over the benefits denial process—the only proper parties for ERISA claims under 29 U.S.C. §§ 1132(a)(1)(b) [and] 1132(a)(3)." *Doe v. United Health Grp. Inc.*, No. 17CV4160AMDRL, 2018 WL 3998022, at *3 (E.D.N.Y. Aug. 20, 2018) (citing *Chapman v. ChoiceCare Long Island Term Disability Plan*, 288 F.3d 506, 509 (2d Cir. 2002)). Allegations that Elevance and Carelon "took part in administering [the] plan" are insufficient to maintain claims against them under ERISA. *Id*.

VIII. PLAINTIFFS FAIL TO STATE A CLAIM FOR BENEFITS UNDER ERISA

Plaintiffs contend their ERISA benefit claim as to certain speech therapy claims should not be dismissed either because they were not required to plead exhaustion of administrative remedies, or because they did adequately plead exhaustion. Opp. at 25–27. Both arguments fail.

First, Plaintiffs claim *Paese v. Hartford Life & Accident Ins. Co*., 449 F.3d 435, 446 (2d Cir. 2006), establishes exhaustion is an affirmative defense that need not be pleaded. But courts in this circuit do not read *Paese* as a "license to avoid pleading" exhaustion and have issued a "long line of post-*Paese* cases" dismissing ERISA claims "where the plaintiff fails to plausibly allege exhaustion of remedies." *Neurological Surgery, P.C. v. Aetna Health Inc.*, 511 F. Supp. 3d 267, 296 (E.D.N.Y. 2021); *Cooper v. Int'l Bus. Machines Corp.*, No. 3:24-CV-656 (VAB), 2024 WL 5010488, at *7 (D. Conn. Dec. 6, 2024) (dismissal for failure to plead exhaustion).

Second, Plaintiffs contend they adequately pleaded exhaustion because their allegations

include "dates and details about when the Mazzolas' claims were denied and when they were appealed." Opp. at 28. Plaintiffs contend exhaustion is established for "every claim for coverage" in a six-month period by the allegation the Mazzolas "appealed the denials by repeatedly submitting electronic appeals." *Id*. (citing Compl. ¶ 185). But a plaintiff must allege the "fundamental details" for *each* claim to establish exhaustion: "when the appeal was taken," "when the appeal was decided," and whether the required procedure was followed and a final decision reached on each claim. *See Neurological Surgery*, 511 F. Supp. 3d at 294. Plaintiffs fail to do so.[2]

IX. PLAINTIFFS FAIL TO STATE A FIDUCIARY DUTY CLAIM

Plaintiffs contend that they have adequately alleged a fiduciary duty claim against Defendants because they allege each Defendant was a plan fiduciary and acted in a fiduciary capacity when making alleged misrepresentations. Opp. at 31. But Plaintiffs' argument ignores their own allegations and the arguments set forth in Defendants' motion to dismiss. As Defendants explained, the complained-of misrepresentation—exaggeration of the size of the provider network and plan benefits "to increase enrollment," Compl ¶ 440—describes efforts to market the plan to non-participants, *i.e.*, those who could be persuaded to enroll. Plan marketing does not implicate any "discretionary authority or discretionary control respecting management of [the] plan," and thus is not a fiduciary act. *See Haddock v. Nationwide Fin. Servs., Inc.*, 293 F.R.D. 272, 282 (D. Conn. 2013). And while Plaintiffs argue that misrepresentations to plan members could constitute a breach of fiduciary duty, their fiduciary duty claim as alleged is not based on such allegations, and "the Complaint cannot be amended by the briefs in opposition to a motion to dismiss." *Red Fort Cap., Inc v. Guardhouse Prods. LLC*, 397 F. Supp. 3d 456, 476 (S.D.N.Y. 2019).

[2] While Plaintiffs argue exhaustion of claims after March 2025 was futile, Plaintiffs cannot make a "clear and positive showing" of futility, *Kennedy v. Empire Blue Cross & Blue Shield*, 989 F.2d 588, 594 (2d Cir. 1993), without allegations showing they had pursued available remedies.

X. PLAINTIFFS FAIL TO STATE A PARITY ACT CLAIM

Plaintiffs concede that the regulations on which they base their Parity Act allegations are inapplicable, *see* Opp. at 35 & n.12, but nevertheless claim their allegations comparing outcomes rather than processes establish a Parity Act violation. Opp. at 32–35. They are incorrect.

To plead a Parity Act claim, a plaintiff *must* identify a specific treatment limitation that is applied more restrictively to mental health benefits. *See Gallagher v. Empire HealthChoice Assurance, Inc.*, 339 F. Supp. 3d 248, 256 (S.D.N.Y. 2018). The critical flaw in Plaintiffs' argument—which distinguishes it from the cases on which Plaintiffs rely—is that comparison of outcomes does not identify any treatment limitation that results in the claimed disparity. Thus, Plaintiffs' allegations that the Mazzolas had a "vastly easier time finding in-network medical care than in-network mental health care" does not plausibly identify any treatment limitation that *causes* this difference. Compl. ¶¶ 113–23. The same is true of the conclusory allegation that Defendants applied "less rigorous" processes to ensure network adequacy for mental health providers. *Id.* ¶ 452. These allegations cannot establish a Parity Act violation absent a non-conclusory allegation that an identified treatment limitation is applied more restrictively to mental health services.

Plaintiffs are also incorrect that courts permit Parity Act claims to proceed to discovery on "disparate results" alone. Rather, in each case Plaintiffs cite, the plaintiff identified a specific treatment limitation—exclusion of wilderness programs, acute symptom requirement—that the plaintiff alleged was applied only to behavioral health services and not medical/surgical analogs. *See, e.g.*, *Gallagher*, 339 F. Supp. 3d at 258; *Gary K. v. Anthem Blue Cross & Blue Shield*, No. 1:24-CV-07878 (ALC), 2025 WL 2782409, at *7 (S.D.N.Y. Sept. 30, 2025). Plaintiffs' allegations are readily distinguished because Plaintiffs have not identified *any* treatment limitation that Anthem applies more restrictively to behavioral health benefits, and they accordingly have failed to plead a required element of a Parity Act claim. *See Gallagher*, 339 F. Supp. 3d at 258.

Dated: March 27, 2026

Respectfully Submitted,

By: /s/ *Stefanie Cerrone*

Stefanie Cerrone
Matthew J. Aaronson (*admitted pro hac vice*)
TROUTMAN PEPPER LOCKE LLP
875 Third Avenue
New York, NY 10022
T: (212) 704-6000
matthew.aaronson@troutman.com
stefanie.cerrone@troutman.com
Attorneys for Defendants Anthem Health Plans, Inc., Carelon Behavioral Health, Inc. and Elevance Health, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by CM/ECF to all counsel of record on this 27th day of March 2026.

/s/ Stefanie Cerrone
Stefanie Cerrone