

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

PUBLIC PARTNERSHIPS, LLC, *et al.*

Defendants.

Case No. 1:26-cv-3601 (OEM)

**DEFENDANT PUBLIC PARTNERSHIPS, LLC'S REPLY MEMORANDUM
IN FURTHER SUPPORT OF ITS MOTION TO DISMISS**

DOJ's opposition reveals a fraud case in free fall. PPL's motion showed how the Complaint misstates CDPAP's provisions, and the compensation structure they establish, to advance baseless fraud claims and meddle in New York's Medicaid policy. DOJ's mischaracterizations of the CDPAP RFP are indefensible, so DOJ makes no effort to defend them. Indeed, in a desperate – and unsuccessful – attempt to address the infirmities detailed by PPL's motion, DOJ ultimately abandons its central allegation of fraud *and* nearly every aspect of the relief sought by the Complaint. DOJ's opposition is thus in open conflict with its Complaint, and that struggle only confirms that the Complaint is legally defective and should be dismissed.

This case is based on two central, related allegations: (1) PPL submitted a “fraudulent” PMPM in its successful bid because PPL planned to (2) fraudulently maintain a “spread” in the bill rate that was prohibited by the CDPAP contract. Per the Complaint: “The RFP and contract made clear that this ‘spread’-based system was being replaced and that the sole FI would be *compensated solely* with a [PMPM] payment from the state to compensate the FI *for all costs.*”

But as PPL's motion explains, the contractual documents incorporated into the Complaint do not say that. DOJ now concedes that the CDPAP contract provides PPL with *two* compensation sources for *two distinct categories* of costs: administrative costs and direct care service costs. This concession reveals the basic illogic in DOJ's theory. PPL proposed a contractual PMPM price to cover its administrative overhead and New York accepted it. It is not the kind of information that can be “false” or “fraudulent.” DOJ attempted to manufacture a fraud case by claiming that any other compensation PPL received was illegal and somehow rendered the contractually-agreed-to PMPM “fraudulent.” But DOJ does not dispute PPL's correct reading of the relevant RFP and contract provisions, nor offer other clauses that would support DOJ's naked allegations.

Instead, DOJ's opposition falls back on new – and equally unsound – interpretations of

how the CDPAP RFP and contract treat direct care service costs, but this “amendment by opposition” strategy is invalid. DOJ cannot cure its defective Complaint by offering new, contradictory allegations in motion papers. *See, e.g., Williams v. Black Entm’t Television, Inc.*, 2014 WL 585419, at *11 (E.D.N.Y. Feb. 14, 2014) (“Plaintiff cannot amend his pleadings through an opposition brief.”). Nor can DOJ hide behind the motion to dismiss standard because the Court need not – and should not – credit allegations that DOJ’s own incorporated documents refute.

Beyond dooming its fraud theory, DOJ’s concession that CDPAP allows two forms of compensation buttresses *Burford* abstention. DOJ denies that this case asks the Court to “determine what reasonable state reimbursement rates are, or to interpret state statutes.” Op. at 13. Of course it does. The case hinges on DOJ’s (baseless) assertions about (1) why New York amended CDPAP, (2) what NYSDOH meant in its RFP, (3) what NYSDOH meant in the Q&As responses, *and* (4) the reasonableness of the MCO bill rate negotiated and approved by NYSDOH. DOJ prefaces its new fallback argument with “even if PPL had been contractually permitted to earn some marginal profit from the direct-care bill rate....” This is the central issue in the case and requires the Court “to determine what [a] reasonable state reimbursement rate [is and] to interpret state statutes.” The Court should “avoid resolving difficult state law issues involving important public policies or avoid interfering with state efforts to maintain a coherent policy in an area of comprehensive regulation or administration.” *Bethphage Lutheran Serv., Inc. v. Weicker*, 777 F. Supp. 1093, 1098 (D. Conn. 1991), *aff’d*, 965 F.2d 1239 (2d Cir. 1992).

DOJ cannot answer PPL’s challenge to the unprecedented use of §1345 to obtain permanent asset seizure despite having disclaimed any intention to pursue a criminal prosecution. DOJ misreads PPL as arguing “that a parallel criminal investigation be at least pending” before a §1345 case may be brought. That is not the argument. Rather, PPL echoes the warning of the only

published case to consider the question that for DOJ to seek *permanent* asset seizure using §1345 without any criminal process is “impossible to justify and would undoubtedly invite serious constitutional challenge.” *United States v. Fang*, 937 F. Supp. 1186, 1197 (D. Md. 1996). DOJ concedes it seeks permanent asset seizure and has disclaimed any intent to bring a criminal case, yet fails to justify its use of the statute in this manner. Instead, DOJ labels the sensible warning of a respected jurist “fearmongering.” Everyone should fear the Department of Justice misusing a statute to circumvent constitutional protections. DOJ’s blasé refusal to engage with the substance of the challenge previewed by *Fang* prove PPL’s fear well-founded. Remarkably, DOJ eventually admits the constitutional “problem” yet offers no real solution. The solution is dismissal.

ADDITIONAL FACTUAL BACKGROUND

DOJ presents a moving target, and its new arguments require additional background. DOJ’s Opposition claims that under the old system: “FIs generally billed an hourly rate to the MCOs that was slightly higher than the value of the compensation package FIs provided to the CDPAP caregivers. Under this system, the difference in these two rates (i.e., the “spread”) *was the sole revenue stream FIs earned* for administering CDPAP.” Opp’n at 3. This is categorically false. The FIs received a PMPM under the old CDPAP system. Nobody with a basic understanding of New York’s CDPAP would dispute this. Indeed, the Court can take judicial notice of the prior FI PMPM rates that remain displayed on DOH websites¹:

Fiscal Intermediaries Three Tiered Administrative Fee Schedule			
Tier	Rate Code	Number of Direct Care Hours Authorized Per Month Per Consumer	FI PMPM Reimbursement Effective April 1, 2022
1	8400	1 – 159 Hours	\$146.45
2	8401	160 – 479 Hours	\$387.84
3	8402	480 Hours and above	\$1,046.36

¹ See, e.g., *Fiscal Intermediaries Three Tiered Administrative Fee Schedule*, NEW YORK STATE DEP’T OF HEALTH, https://www.health.ny.gov/facilities/long_term_care/reimbursement/cdpap/fiscal_int_3_tiered_fee_schedule.htm (last visited Sep. 11, 2026).

The PMPM paid to an FI under the prior system was in addition to the bill rate/pay rate “spread” that DOJ alleges the CDPAP update did away with (Compl. ¶38). However, nowhere does DOJ cite any language in the statute, RFP, or Q&As supporting this claim. Indeed, the opposite is true.

As DOJ now concedes, the new CDPAP structure maintained two categories of costs covered by two different revenue streams: “Administrative Costs” and “Direct Care Service Costs.” Opp’n at 4. DOJ’s fraud allegations depend on hopelessly confusing these two simple concepts, but the contractual language is clear. Notably, DOJ refers to these as direct care costs, but never in quotes, because the RFP defines them as “direct care *service* costs” and provides that PPL can be compensated – not reimbursed, *compensated* – for “direct care service delivery”²:

The awarded Contractor will not be reimbursed separately for any costs outside of its submitted Attachment F: Cost Proposal and the direct care service delivery compensated separately as identified in Section 5.4: Payment.

DOJ’s new allegation (not present in the Complaint and thus not effective to save its claims) is to argue that there can be no spread in the bill rate because one of the Q&A responses states that “Direct care will be paid through existing means with the expectation that it flows to the worker.” Opp’n at 4. But, as PPL’s motion details – and DOJ ignores and thus concedes – the Direct Care Service Costs include variable costs, which necessitate a margin to protect PPL from receiving insufficient funds from the bill rate to cover these Direct Care Service Costs *mandated by the statute*. This is the purpose behind the “margin” in the bill rate and DOJ cannot point to a single RFP or contract term suggesting that such a margin is prohibited.

ARGUMENT

I. DOJ’s Fraud Allegations Remain Legally Deficient for Several Distinct Reasons.

PPL’s motion details how the Complaint alleges fraud with vague and unsupported

² Ex. A, RFP, Sec. 6.3. Emphasis added and throughout unless otherwise indicated.

assertions that fail to satisfy Rule 9 as a matter of law. DOJ's opposition compounds this problem and responds with even vaguer paraphrasing of its already facially defective allegations. Indeed, DOJ offers new labels ("garden variety") to their prior labels as if applying labels to labels satisfies DOJ's pleading requirements. It does not. There is no "garden variety" exception to Rule 9. DOJ has substantial pleading obligations to bring a fraud case, and it has failed to meet them.

A. DOJ Admits That PPL's RFP Contains Statements of Future Performance Not Actionable As Fraud Absent a Lack of Intent to Perform.

DOJ concedes that it has failed to plead fraud regarding PPL's prospective RFP responses. "[T]he government does not claim that PPL had no intention of attempting to complete the transition to become the sole FI." Opp'n at 17. That concession alone is a sufficient basis to grant PPL's motion as to PPL's statements in its bid. DOJ misapprehends this central argument and merely realleges falsity: "the government alleges PPL made specific misrepresentations in its RFP response about its capabilities and specific aspects of its transition plan that it knew were not true." Opp. at 17. This does not solve DOJ's problem because PPL cites – and DOJ does not address – controlling precedent that "only if a contractual promise is made *with no intent ever to perform it* can the promise itself constitute a fraudulent misrepresentation." *United States ex rel. O'Donnell v. Countrywide Home Loans, Inc.*, 822 F.3d 650, 662 (2d Cir. 2016). The RFP statements are prospective contract promises and DOJ admits it does not allege PPL lacked the intent to perform.

DOJ Concedes It Has Not Alleged Any Evidence that PPL Did Not Intend to Perform the Contract at the Quoted PMPM. DOJ's concession that the CDPAP RFP and contract do in fact contemplate PPL receiving two unrelated streams of revenue (Opp'n at 4-5) allows the Court to dispense with the allegation that PPL's PMPM was fraudulent. PPL submitted a proposed PMPM and New York accepted it. DOJ does not allege that PPL is charging a *different* PMPM under the contract. The supposed fraud alleged in the Complaint is that PPL certified that it would

accept no revenue other than the PMPM. DOJ now concedes this was not true, but it is also irrelevant. Whether PPL may maintain a margin in the bill rate has no bearing on the PMPM and certainly does not render the PMPM offered by PPL somehow “fraudulent.”³

DOJ’s Allegations About the Eventual Success or Failure of PPL’s Staffing Plan and Website Do Nothing to Support a Lack of Intent to Perform. DOJ’s selective and misleading citation to the documents incorporated by reference in the Complaint is particularly glaring in its discussion of the staffing plan. DOJ rarely quotes PPL’s bid because DOJ is inventing representations that do not exist: “PPL promised to hire qualified agents with years of experience ‘working with healthcare, social services, or related programs’ for the critical job of enrolling consumers and caregivers...” DOJ knows, but does not reveal to the Court, that the bid actually says: “Hiring and Training Staff: We will *recruit* and train a dedicated team to support the transition process.” Ex. D, at 173. Setting aside how DOJ seeks wrongly to criticize the eventual transition staff, a contractual promise to recruit employees with certain qualifications is inherently prospective and DOJ has conceded that it does not allege that PPL had *no intention* of recruiting qualified personnel sufficient to allege fraud. The same is true for PPL@Home. PPL’s bid predicted the success that its web platform would provide to the transition. *See, e.g.*, Ex. D, at 13, 45. It has been successful. Regardless, DOJ cannot simply claim otherwise and then assert that PPL had no intention of providing the user experience described in the RFP response.

DOJ’s Allegations About PPL’s Financial Readiness and Project Financing Prove PPL’s Intent to Perform. DOJ’s opposition concedes PPL’s point that the internal PPL board

³ As PPL’s motion explains, the presentation on which DOJ hangs its entire case predicts that the weighting of the scoring criteria in the *original* RFP might drive low PMPMs, not that PPL’s bid – which occurred *after* the RFP amendment adding additional transition revenue – was “recklessly low.” DOJ unfairly misstates this evidence. Even so, the Court need not engage in that analysis because DOJ does not allege that PPL has failed to perform the contract at the quoted PMPM.

document describing its financial plan confirms that PPL did intend to implement a “financial capital structure plan that supports the startup costs needed for this contract.” Compl. ¶ 36; Opp’n at 17. PPL pointed out – and DOJ ignores and thus concedes – that the Complaint does not allege *anywhere* that the transition was undercapitalized. So, regarding financial wherewithal, DOJ does not even allege eventual non-performance, let alone fraud.

B. DOJ Attempts to Excuse Itself from the Particularity Requirements of Rule 9(b) – Without Success – and DOJ’s Own Case Law Supports Dismissal.

DOJ posits an “overarching scheme” exception to Rule 9 that excuses DOJ from pleading any individual fraudulent statement made to the public or to “MCOs” with particularity. That is not the law, and not what the cases DOJ cites hold. In *State Farm Mut. Auto. Ins. Co. v. James M. Liguori, M.D., P.C.*, this court did note that “Rule 9(b) does not require that each specific misrepresentation be identified where an ongoing fraudulent scheme is alleged. 589 F. Supp. 2d 221, 237 (E.D.N.Y. 2008). But the holding proves PPL’s point because in *State Farm* DOJ *did* plead representative examples of the fraudulent statements with particularity: “[T]he complaint alleges the fraudulent statements, the speaker, and why the statements were allegedly fraudulent.” *Id.* Because the complaint there “list[ed] some but not all of the individual [fraudulent] claims” the court found Rule 9 to have been satisfied. *Id.* Here, DOJ failed to identify a single statement, as the Opposition concedes: “The Complaint alleges that throughout late fall 2024 and January 2025, PPL engaged in negotiations with MCOs about direct-care bill rates and falsely told MCOs that DOH had approved the higher bill rates PPL proposed to MCOs.” Opp’n at 19.

In that months-long period, PPL was speaking to *dozens of MCOs*. DOJ fails to identify the speaker at PPL for any such statements, the MCO recipient, or why such a statement was false. The timing of the statements is crucial because, by DOJ’s own allegations, in December 2024 DOH did approve the FFS rate (Compl. ¶¶ 57,64) thus PPL telling the MCO’s that DOH approved

the rate being proposed would have been true. DOJ's assertion notwithstanding, PPL is absolutely **not** on notice of what fraudulent statement DOJ alleges PPL made to any MCO.

DOJ admits the "Complaint does not identify some names of individual speakers of the alleged fraudulent statements" as if the names of employees otherwise sufficiently identified were all the Complaint lacks. Opp'n at 20. This misses the point entirely. The Complaint fails to satisfy Rule 9(b)'s requirement to identify whom DOJ alleges made the fraudulent statements. The most DOJ asserts is that the Complaint describes the circumstances in which **one** alleged false statement was made, *id.* at 20 (allegedly false testimony before the legislature), and references two employees by job title. *Id.* at 19–20. But neither point provides any relief. The testimony (an immediately corrected mistake) occurred more than a year after PPL's bid and months after the central facts of DOJ's Complaint. And the only statements attributed to the CFO and executive are alleged by DOJ to be **true**. *See* Compl. ¶¶ 35, 51.

The Opposition's fallback plea to DOJ's policy against naming individuals is no help because "[l]ike any ordinary litigant, the Government must abide by the Federal Rules of Civil Procedure," *S.E.C. v. Collins & Aikman Corp.*, 256 F.R.D. 403, 414 (S.D.N.Y. 2009). It is also a red herring, because PPL is not arguing the technicality that speakers have been identified but not named.⁴ No speaker information is pleaded **at all** for the alleged fraudulent statements.

C. DOJ's Opposition Fails to Point to Any Plausible Evidence of Scienter.

DOJ does nothing to rebut the failure to allege scienter with any evidence, let alone "facts that give rise to a strong inference of fraudulent intent[.]" a necessary element as DOJ's own case acknowledges. *State Farm*, 589 F. Supp. 2d at 236. The Opposition has no answer for the

⁴ To be clear, that is a sufficient basis to dismiss in this jurisdiction. *See, e.g., Burnett v. Halyard Health, Inc.*, 2016 WL 11746743, at *6 (N.D.N.Y. Oct. 12, 2016) (dismissing fraud claims in second amended complaint where "[p]laintiff could conceivably allege the specific identity of the speaker"). PPL has demonstrated a more substantial failure to comply with Rule 9.

authorities directly on point holding that similarly vague and unsupported allegations that “the Defendant knew” are insufficient as a matter of law, so it instead applies the label “garden variety” to its fraud allegations as if that solves the scienter problem. It does not.

DOJ suggests fraudulent intent by contrasting (1) vague, unspecified statements about prospective caregiver pay allegedly made by (unnamed) call center employees with (2) “broad assurances to caregivers (and patients) that there would be no changes to pay and thus no disruptions to care. *Id.* ¶ 106.” Such impenetrably vague allegations offer no inference, let alone a strong inference, that any speaker believed any one of those statements was false. The Opposition fares no better attempting to show any “facts that give rise to a strong inference of fraudulent intent” regarding PPL’s proposed PMPM (which was agreed to and remains accurate) or the transition timeline (which was extended by court order and the transition was timely achieved).

II. In Attempting to Salvage Its Misguided Conspiracy Claim, DOJ Further Concedes that Materiality and Reasonable Reliance Cannot Exist on the Facts As Pleaded.

PPL’s motion explains how DOJ’s fraud theory cannot establish materiality because of the self-defeating assertions that DOH officials knew the falsity of, and thus could not have reasonably relied on, PPL’s alleged false statements. PPL also pointed out that DOJ cannot accuse PPL of conspiring with itself. The Opposition collapses these two issues and insists that the Complaint meant to allege that PPL conspired with the NYSDOH defendants.

First, no allegations even approaching the pleading standard for conspiracy⁵ exists in the Complaint. DOJ nowhere alleges what meeting of the minds was reached between whom to achieve what purpose. DOJ thus fails to allege conspiracy as a matter of law.

⁵ “[U]nder 18 U.S.C. § 1349, the Government must prove beyond a reasonable doubt that: (1) two or more persons made an agreement to commit health care fraud; (2) that the defendant knew the unlawful purpose of the agreement; and (3) that the defendant joined in the agreement with the intent to further the unlawful purpose.” *United States v. Ganji*, 880 F.3d 760, 767 (5th Cir. 2018).

Second, this misguided attempt to salvage the conspiracy allegations is fatal to materiality. DOJ cannot argue in one breath that PPL and the NYSDOH decisionmakers had a meeting of the minds to act with shared knowledge *and* in the next argue that NYSDOH reasonably relied on materially false statements made by PPL. Falsity is a basic element of fraud and, even under DOJ's asserted definition of materiality, the false statement must have been "capable of influencing the decisionmaker." Opp'n at 23. Taking DOJ's (baseless) allegations at face value, the decisionmakers knew the facts and had a preexisting agreement to act *regardless of the statements*. That cannot constitute fraud as a matter of law. The only reasonable inference is much simpler: PPL and NYSDOH had a "meeting of the minds" to work together cooperatively and lawfully.

III. DOJ Ignores the Controlling Precedent on *Burford* Abstention, and Its Baseless Recharacterization of Its Complaint Does Not Rebut the Case for Abstention Here.

PPL cited persuasive precedent counseling that the Court abstain from "resolving difficult state law issues involving important public policies or avoid interfering with state efforts to maintain a coherent policy in an area of comprehensive regulation or administration." *Bethphage Lutheran Serv., Inc.*, 777 F. Supp. at 1098. Because DOJ cannot refute the application of that precedent to this case, it resorts to mischaracterizing the nature of this action, the relief sought, and the nature of *Burford* abstention itself. Neither tactic manages to undermine the sensible application of the doctrine here.

A. The Court Should Not Credit DOJ's Desperate Reframing of the Issues at Stake.

DOJ asks the Court "help restore the status quo as much as possible..." (Compl. ¶ 121) to help "RFP #20524's losing bidders." *Id.* ¶ 113. As PPL predicted (Br. at 22), DOJ is unwilling to be candid about the relief it seeks. "Despite PPL's invective, the complaint does not seek to unwind the award of the CDPAP contract to PPL or for the court to establish rates for CDPAP." Opp'n at 13, n. 4. This is not credible, nor is DOJ's denial that it asks this Court "to determine what

reasonable state reimbursement rates are, or to interpret state statutes.” Opp’n at 13.

NYSDOH awarded the CDAPAP contract after a state procurement that New York courts have repeatedly upheld. Pursuant to the CDPAP statute and regulations, NYSDOH approved a bill rate for 2025 and 2026. This case is premised on DOJ’s assertion that NYSDOH’s rate setting process – and outcome – are illegitimate. DOJ advances this argument based on DOJ’s own characterization of what DOJ believes the CDPAP statute and RFP were designed to do. No amount of revisionary rhetoric can change the central issues in this case.

The Opposition seeks to avoid the implications of this fact by emphasizing its description of this case as addressing a “*federal*-state healthcare program.” But no amount of bold or italics rebut the Second Circuit’s holding in *Bethphage* (conceded by DOJ) that “abstention under *Burford* was appropriate because the subject matter of this case—reimbursement rates under the Medicaid Act—is an area of legitimate state interest.” Br. at 23. DOJ cannot contest that *Bethphage* applies here, and thus relegates that case to a footnote with no analysis. Opp’n at 13, n. 4. DOJ disputes the legality and propriety of PPL’s NYSDOH-approved bill rates under CDPAP. *Bethphage* supports abstaining from that dispute.

B. DOJ Misstates the Factors Courts Consider in Applying *Burford* Abstention and Its Own Cases Prove PPL’s Point.

DOJ relies on the Second Circuit’s decision *Planned Parenthood of Dutchess-Ulster, Inc. v. Steinhaus*, 60 F.3d 122, 127 (2d Cir. 1995), but does not accurately cite it. The Opposition cites the *Steinhaus* case as holding that “*Burford* asks courts to consider whether there is an alternative state forum available...” Notably, DOJ does not include those words in quotes because they appear nowhere in the *Steinhaus* opinion; an alternative state forum is not a *Burford* factor. *Steinhaus*

accurately cites the actual *Burford* factors set forth in *Bethphage*.⁶

DOJ then bases its rebuttal on this non-existent factor: “PPL fails at the outset because it does not identify a state adjudicative forum available for the federal government to bring this Section 1345 suit or anything like it.” Opp’n at 13. Because this is irrelevant to the *Burford* analysis, the Court can ignore this contention. Even so, it is nonsensical. Obviously §1345 actions must be brought in federal court, that is beside the point. State fora are available for the arguments DOJ makes to be adjudicated, such as the bid protest cases that have already been rejected.

The real factors being analyzed in *Steinhaus* and *Bethphage* – (1) specificity of the state regulatory regime (2) interpretation of state statutes and (3) subject matter of state concern – all favor abstention, as the *Steinhaus* opinion itself says. There, the Court ruled that the award of a municipal contract did not represent a sufficiently specific state regulatory regime because – unlike *Bethphage* – the issues in *Steinhaus* did not involve state Medicaid policy. Here, much of the Complaint consists of DOJ’s musings about the rationale and effects of state Medicaid policy.

The same is true for DOJ’s other case, *Allstate Ins. Co. v. Elzanaty*, 916 F. Supp. 2d 273 (E.D.N.Y. 2013) where the court declined abstention because “the present action does not relate to any administrative action undertaken by the State of New York, much less an order or proceeding of a state agency.” *Id.* at 291 (citing *State Farm Mut. Auto. Ins. Co. v. Schepp*, 616 F. Supp. 2d 340, 346 (E.D.N.Y. 2008)). Here, DOJ is suing senior New York state officials *in their official capacity* purely over administrative actions taken on issues that are the result of state administrative proceedings. These cases support, rather than undermine, abstention.

⁶ “[T]he court looks to several factors to determine the applicability of *Burford* abstention, including: “[1] the degree of specificity of the state regulatory scheme, [2] the necessity of discretionary interpretation of state statutes, and [3] whether the subject matter of the litigation is traditionally one of state concern.” *Steinhaus*, 60 F.3d at 127(citing *Bethphage*).

IV. DOJ Ultimately Concedes PPL’s Central Argument that the Proposed Use of §1345 For the Relief Sought By DOJ On These Facts is Unlawful and Offends Due Process.

PPL advances a narrow §1345 argument tailored to the specific facts of this case. Because DOJ cannot rebut the merit of that argument, it attacks a strawman that has no relevance here. Remarkably, DOJ eventually concedes (Opp’n at 10, n. 2) that it understands PPL’s argument and attempts to avoid dismissal of this action by implicitly suggesting to strike its request for the permanent seizure of assets prayed for in the Complaint. Dismissal is the more appropriate remedy.

A. PPL’s Motion Advances a Narrow Argument and Neither DOJ’s Baseless Reframing Nor Its Passing Statutory Construction Argument Refute It.

To avoid addressing PPL’s argument on its merits, DOJ misconstrues PPL’s position: “PPL urges the court to write into 18 U.S.C. § 1345 a new condition: that a parallel criminal investigation be at least pending.” Opp’n at 1. That is not what PPL argues. PPL’s argument is narrow and focused on the permanent financial seizure DOJ chose to seek here. The Complaint defines “gross proceeds” as “any amounts beyond the \$68.50 PMPM and any amounts that have flowed to caregivers” which, by DOJ’s own definition, would include tens of millions of dollars *that PPL did not retain* reimbursing valid Direct Care Service Costs. The Complaint then asks the Court *to permanently freeze* assets equivalent to that amount, which would cripple PPL and CDPAP. As the *Fang* court previewed, such relief violates the statute and the Constitution on these facts.

DOJ falls back on the anticipated argument that §1345’s reference to the application of the Federal Criminal Rules in the event of an indictment means that DOJ can proceed in the manner it seeks to here. PPL already addressed this argument and the Opposition ignores – and thus concedes – the ineffectiveness of this attempt at statutory interpretation. *See* Br. at 17–19. PPL does not contest that a §1345 action might occur before a criminal investigation concludes or that, while a §1345 case is pending, DOJ might decline to indict. As DOJ itself conceded in a prior case (that DOJ ignores) “*civil receiverships* under 18 U.S.C. § 1345 are expressly structured to

coordinate with parallel criminal proceedings” *United States v. Petters*, 667 F. Supp. 2d 1043, 1045 (D. Minn. 2009). The structure of the statute confirms PPL’s argument.

B. DOJ Cannot Deny the Punitive Nature of the Relief It Seeks And Ultimately Concedes that it Has an Unsolved *Fang* “Problem.”

DOJ tacitly concedes that it has disclaimed any intent to bring a criminal case against PPL and further concedes that to do so now would constitute misuse of parallel proceedings. Opp’n at 10, n. 2. As a fallback, DOJ gaslights the Court and PPL by denying the nature of the relief it seeks here: “PPL has not been charged with any crime, so it is not facing the prospect of a criminal conviction or loss of liberty in this proceeding.” *Id.* at 11. That is the crucial issue. PPL has not been – and will not be – charged with a crime yet ***absolutely faces criminal punishment*** in this case. *See, e.g., United States v. Bajakajian*, 524 U.S. 321, 334 (1998) (“the forfeiture of respondent’s currency constitutes punishment.”).

Having belittled the sensible warning of the *Fang* court – which DOJ cannot dispute – as “30-year-old *dicta*,” DOJ ends its discussion of PPL’s §1345 argument by conceding that this case is plagued by the “problem” that the *Fang* court and PPL have identified: “the solution ***to the problem identified in Fang*** would not be to dismiss the entire case at the outset, but instead to structure the relief differently.” Opp’n at 10, n. 2. This is a stunning admission which DOJ buries in a footnote, as if that lessens its significance. It does not. DOJ offers no basis why the problem it now admits it has does not warrant dismissing this misuse of §1345. As discussed further below, at a minimum the Court should accept DOJ’s euphemistic invitation to “structure the relief differently” by striking DOJ’s request for asset seizure and the appointment of a receiver.

V. DOJ’s Cursory Response to PPL’s Motion to Strike the Receiver Request Is Not Only Unsupported by Any Law But Misstates Controlling Precedent.

PPL’s motion demonstrated that the Court should strike DOJ’s request for a receiver because it is an extreme remedy of last resort and DOJ does not even attempt to allege ***any*** of

necessary elements. Br. at 34–35. DOJ concedes this argument but claims that because §1345 mentions a receiver as a potential remedy, DOJ need not satisfy the common law equitable requirements. This badly misstates the law, and thus DOJ cites no case law in support of this argument. It merely references a case in which a receiver was appointed. *United States v. Khan*, No. 23-24497-CIV, 2023 WL 8711602, at *4 (S.D. Fla. Dec. 14, 2023).

First, the Supreme Court recently reiterated that “when Congress empowers courts to grant equitable relief, there is a strong presumption that courts will exercise that authority in a manner consistent with traditional principles of equity.” *Starbucks Corp. v. McKinney*, 602 U.S. 339, 345 (2024). DOJ fails to alert the Court to this binding precedent, let alone attempt to identify language in §1345 that would overcome that strong presumption, because no such language exists. DOJ’s only argument to avoid striking its receiver request is a plain misstatement of the law.

Second, courts hold that remedies referenced in §1345 **are** subject to the traditional common law analyses. In *United States v. Hoffman*, 560 F. Supp. 2d 772, 777 (D. Minn. 2008), DOJ sought a receiver under §1345. The Court, agreeing with PPL, reiterated that:

[A] receiver is ‘an extraordinary equitable remedy that is only justified in extreme situations. There is no precise formula for determining when appointment of a receiver is appropriate, but courts generally consider the following factors: (1) a valid claim by the party seeking the appointment, (2) the probability that fraudulent conduct has occurred or will occur to frustrate that claim, **(3) imminent danger that property will be concealed, lost, or diminished in value, (4) inadequacy of legal remedies, (5) lack of a less drastic equitable remedy, and (6) likelihood that appointing the receiver will do more good than harm.**”

Id. Indeed, in *United States v. Khan* – the only case the Opposition cites – DOJ’s receiver request **cited to the decision in *United States v. Hoffman***. So, DOJ is aware of, but did not direct the Court to, precedent holding the opposite of its argument. And DOJ’s only cited case supports PPL.

CONCLUSION

PPL respectfully requests that the Court dismiss Counts I and II of the Complaint with prejudice.

Dated: September 11, 2026

Respectfully submitted,

s/ Philip J. O'Beirne

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Partnerships, LLC*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this 11th day of September 2026 via ECF upon all counsel of record.

s/ Philip J. O'Beirne

Philip J. O'Beirne

Counsel for Public Partnerships LLC