

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

PUBLIC PARTNERSHIPS, LLC, a
Delaware limited liability company; DR.
JAMES MCDONALD, in his official
capacity as Commissioner of the New York
State Department of Health; and AMIR
BASSIRI, individually and in his official
capacity as Medicaid Director at the New
York State Department of Health,

Defendants.

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

Hon. Orelia E. Merchant

**MEMORANDUM OF LAW IN OPPOSITION TO
MOTION TO DISMISS OF DEFENDANTS
DR. JAMES MCDONALD AND AMIR BASSIRI**

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I. INTRODUCTION

New York has the largest Consumer-Directed Personal Assistance Program (“CDPAP”) in the country, servicing around 250,000 Medicaid-enrolled New Yorkers, and costing American taxpayers approximately billions of dollars annually. In 2024 and 2025, the New York Department of Health (“DOH”)—led by Commissioner Dr. James McDonald and Medicaid Director Amir Bassiri (“NY Defendants”)—transitioned the state to a single statewide fiscal intermediary (“SFI”) operated by Public Partnerships LLC (“PPL”). As part of this transformation of CDPAP, DOH conducted a sham bid procurement process that involved pre-selection of PPL, a favored vendor, and then failed to enforce key contract terms to the detriment of taxpayers and vulnerable patients. The NY Defendants have also dissembled to the public, courts, and state senators about key aspects of the CDPAP transition.

The NY Defendants’ Motion to Dismiss is meritless and should be denied because the Government’s allegations state valid claims, are highly detailed, and are amply plausible. **First**, there is no sovereign immunity bar to injunctive relief against two state officials acting in their official capacities. **Second**, injunctive relief is warranted because the Complaint plausibly alleges ongoing misconduct. **Third**, the Government has alleged all elements of violations of 18 U.S.C. § 1035 with Rule 9 (b) particularity, if necessary; and **finally**, the Complaint sufficiently alleges a violation of 18 U.S.C. § 371.

II. FACTUAL BACKGROUND

A. New York’s Consumer Directed Personal Assistance Program

New York’s CDPAP provides home care through lay caregivers to New York Medicaid patients. Compl. (Dkt.1) ¶ 14. The program is managed by the state of New York, but largely paid

for by federal tax dollars. *Id.* ¶ 15. The program is a “health care benefit program” under federal law. *See* 18 U.S.C. § 24(b).

Before 2025, payments to CDPAP caregivers flowed from (1) the state of New York; to (2) Managed Care Organizations (“MCOs”) (*i.e.*, health insurance companies that enrolled CDPAP patients); to (3) around 600 Fiscal Intermediaries (“FIs”), who acted as the employer of record for CDPAP caregivers; to (4) approximately 300,000 CDPAP caregivers. Compl. ¶ 16. Under this system, payments from New York to MCOs were capitated payments (*i.e.*, a fixed amount per individual), while payments from MCOs to FIs were an hourly rate per hour of care. *Id.* Payments from FIs to CDPAP caregivers were also generally an hourly rate, plus additional benefits. *Id.* Under that prior regime, FIs generally billed an hourly rate to MCOs that was slightly higher than the value of the compensation package FIs provided to caregivers. *Id.* ¶¶ 16, 37. The difference in these rates (*i.e.*, the “spread”) was the sole revenue stream FIs earned for administering CDPAP. *Id.* ¶ 37.

B. Transition to Single Statewide FI

In the spring of 2024, the New York legislature began to consider designating a single entity as the only authorized FI. *Id.* ¶¶ 18–20. An early draft legislation from April 2024 designated PPL as the new statewide FI. *Id.* ¶ 19. That language was removed, and the final legislation required that a competitive procurement process be used. *Id.* ¶ 20. In March 2024, months before the bid process was announced, Defendant Amir Bassiri, an official with the New York State DOH, reached out to another state government contact to inquire about PPL’s ability to serve as the FI for New York. *Id.* ¶ 21. In April 2024, PPL met with Bassiri and other DOH officials regarding PPL’s “implementation plan” for the CDPAP transition, and PPL also sent DOH a formal copy of

its “implementation plan.” *Id.* ¶¶ 22–23. PPL told DOH later that month that PPL “will not discuss the matter [CDPAP transition] with outside parties.” *Id.* ¶ 23.

C. The RFP and Award of the FI Contract to PPL

In June 2024, New York released a Request for Proposal (“RFP”) for the new statewide FI. *Id.* ¶¶ 24, 67. The RFP required both (1) a technical proposal covering how the bidder would perform FI services and transition the CDPAP program; and (2) a cost proposal addressing the costs New York would pay the bidder to administer the program. *Id.* ¶ 24. The RFP stated that the cost proposal should describe the proposed costs on a per-member, per-month (“PMPM”) basis, and made clear that the PMPM would be the FI’s only compensation for the costs of administering CDPAP. *Id.* ¶¶ 24, 38–39. The RFP and subsequent contract did contemplate that the FI would also bill MCOs for direct-care costs, but the documents made clear those costs were for providing care to CDPAP patients and should go to caregivers. *Id.* ¶¶ 38–39.

PPL submitted its bid on August 21, 2024. *Id.* ¶ 25. PPL’s submission (and the resulting contract) included a \$68.50 PMPM. *Id.* ¶¶ 26, 40, 135a. Other bidders proposed much higher PMPMs. *Id.* ¶¶ 26, 40, 55. Defendant Bassiri coordinated with other DOH employees to disqualify over 100 bidders, some for pretextual reasons. *Id.* ¶¶ 28–29. Bassiri had already personally begun to score PPL’s bid before participating in discussions where DOH attempted to disqualify other bidders. *Id.* PPL signed a contract with DOH to be the sole FI on December 20, 2024. *Id.* ¶ 57.

D. Defendants’ False Statements

False Statements in Contract. The CDPAP contract contains material misstatements regarding its financial structure: it indicates PPL is compensated \$68.50 per member per month for its services when in fact PPL is retaining additional profits from the hourly rates paid to it by

MCOs. *Id.* ¶¶ 54–57, 62–66, 135a. Although DOH knows PPL is improperly retaining an additional profit through the “spread,” DOH has failed to enforce the contract. *Id.* ¶¶ 56, 62–66, 135a.

False Statements about the Progress and Impact of the Transition. Between January and April 2025, DOH officials, including Defendant James McDonald, repeatedly told the public that the transition would not have a negative impact on CDPAP patients’ services or caregiver selection, or caregiver pay. *Id.* ¶¶ 70–71. DOH knew these statements were false because it tracked registration data closely and knew that the transition was not proceeding according to the timeline necessary to effectuate a smooth transition. *Id.* ¶¶ 74–89. DOH continued to assure the public that the transition was on track while intentionally obfuscating information about the true progress of the transition. *Id.* ¶¶ 78–79, 85–89, 135b.

False Statements about the Bid Process. Bassiri falsely stated in sworn court filings in December 2024 and January 2025 that PPL did not attempt any “improper influence” over the RFP process, even though he had personally vetted PPL as the presumptive sole FI months before the RFP was announced or PPL was selected as the sole FI. *Id.* ¶¶ 112, 135c.

False Statements Regarding the Transition’s Purported Savings. McDonald falsely testified in an August 2025 State Senate Hearing that, notwithstanding the increased billable rates being paid to PPL compared to those paid to legacy FIs, the state still expected savings to materialize from the CDPAP transition. McDonald also misleadingly testified that the “new” \$68.50 PMPM paid to PPL created “clear savings” because it was lower than prior PMPMs, even though only a handful of legacy FIs received PMPMs at all and those were paid from the capitated money the state was already paying the MCOs. *Id.* ¶ 111. Defendant Bassiri similarly stated in

sworn court filings in December 2024 and January 2025 that the PPL contract cost around \$1 billion dollars, when he knew the true cost was significantly higher. *Id.* ¶ 112.

III. LEGAL STANDARD

In deciding a motion to dismiss under Rule 12(b)(6), this Court “constru[es] the complaint liberally, accept[s] all factual allegations in the complaint as true, and draw[s] all reasonable inferences in the plaintiff’s favor.” *K.W. on behalf of K.A. v. City of New York*, 177 F.4th 127, 141 (2d Cir. 2026). In considering a Rule 12(b)(6) motion to dismiss, this Court’s “task is to assess the legal feasibility of the complaint; it is not to assess the weight of the evidence that might be offered on either side.” *Id.* The complaint must only contain “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 697 (2009).

IV. ARGUMENT

A. The Complaint Plausibly Alleges Ongoing Misconduct by the NY Defendants and the Risk of Further False Statements

The New York Defendants argue that their misconduct (if any) has already ceased, and that the case should be dismissed. Mem. at 11. This argument is both legally and factually infirm and would require this Court to disregard allegations in the Complaint, construe the Complaint in the Defendants’ favor, and find facts for the Defendants. *K.W.*, 177 F.4th at 141.

The NY Defendants are plausibly alleged to have engaged in a conspiracy to improperly install PPL as the CDPAP vendor, Compl. ¶¶18-30, and then to hide key aspects of the transition from CDPAP stakeholders, *id.* ¶¶58-66; 67-89, and then to cover up all of this misconduct with false statements and omissions. *Id.* ¶¶108-113. The Second Circuit has held that “a conspiracy

continues until its aim has been achieved, it has been abandoned or otherwise terminated.” *United States v. Salmonese*, 352 F.3d 608, 615 (2d Cir. 2003). Because the Complaint adequately alleges overt and other illegal acts continuing into the present, Compl. ¶¶114-121, the Complaint sufficiently alleges that the NY Defendants are violating, or about to violate, the statutes at issue. The Complaint, which the Court must take as true at this stage, plausibly alleges false statements by the NY Defendants that have carried on well after the CDPAP transition was completed, that have not been abated or corrected by the NY Defendants, and that pertain to a scheme that is allegedly still very much ongoing and still causing harm to New Yorkers and to American taxpayers. *Id.*

To take one example, the NY Defendants’ ongoing, allegedly false statements regarding the CDPAP procurement process were aired post-transition in the New York State Senate and sworn court filings. In August 2025, Defendant McDonald testified incorrectly that the state expected savings to materialize and the new \$68.50 PMPM, was much lower than prior CDPAP PMPMs, when it was actually a new cost for the state. *Id.* ¶ 111. Defendant Bassiri similarly stated in sworn court filings in December 2024 and January 2025 that PPL did not attempt any “improper influence” over the RFP process, while leaving out his role in the preselection of PPL as the SFI months in advance. He also misleadingly claimed that PPL’s bid would be cheaper and would only cost the state around \$1 billion while his employees told him the actual cost of PPL’s bid was much higher and that the bidding process was unfair to other bidders. *Id.* ¶¶ 22-23, 28, 65, 77, 112. As the Complaint’s allegations make clear, these topics have continued to be the subjects of

ongoing false statements, omissions, and misrepresentations—including in legislative hearings, lawsuits, public discourse, investigative journalism, and even this lawsuit.¹

The Complaint further alleges that the NY Defendants have engaged in material misrepresentations regarding PPL’s illicit profit-taking in excess of what the official CDPAP transition contract authorized, even after learning of PPL’s intent to violate the terms of the contract. *See, e.g.*, Compl. ¶ 65. Yet as alleged, to date, the NY Defendants have never shifted course from allowing PPL’s unauthorized profit-taking and obfuscating that it is occurring. Continued acquiescence is considered conduct in furtherance of a conspiracy, Defendants must take some affirmative action to establish withdrawal from it. *See Hyde v. United States*, 225 U.S. 347, 369 (1912). (“Having joined in an unlawful scheme, having constituted agents for its performance, scheme and agency to be continuous until full fruition be secured, until he does some act to disavow or defeat the purpose he is in no situation to claim the delay of the law. As the offense has not been terminated or accomplished, he is still offending.”).

Finally, New York’s assertion that rates for the program have been superseded by new 2026 rates is irrelevant and meritless. Mem. at 13. The first problem is that this would require the Court to adjudicate facts not found in the Complaint, construe the Complaint in favor of the Defendants, and to disregard well-pleaded allegations in the Complaint. Compl. ¶¶ 114-21. But the 2025 rates being “superseded” with even higher rates (even if true) is not particularly relevant if, as the Complaint plausibly alleges, the 2025 rates were the product of fraud and New York was

¹ Even in their briefing, the NY Defendants continue to assert—despite their own internal emails that say the opposite, contrary to the plausible allegations in the Complaint, and in the face substantial evidence to the contrary—that there is nothing amiss with how PPL has extracted profits from the CDPAP program.

expecting to pay much less after the transition that they are paying now—in that case, all the rates are higher than they would be without the misconduct described in the Complaint. *United States v. Mennuti*, 679 F.2d 1032, 1035 (2d Cir. 1982).

B. There Is No Bar to this Official-Capacity Action Seeking Injunctive Relief Against Two State Officials

The NY Defendants’ sovereign immunity and quasi-immunity arguments—which they present in several flavors—are incorrect. First, “[i]t is well-settled that States surrendered their immunity from suit by the Federal Government when they ratified the Constitution.” *United States v. Alabama Dep’t of Mental Health & Mental Retardation*, 673 F.3d 1320, 1325–26 (11th Cir. 2012). To the extent the NY Defendants attempt to import immunity into this action using inapposite cases involving private parties, the NY Defendants are incorrect. The NY Defendants have no immunity against this suit because they have no sovereign immunity in litigation against the federal government. *United States ex rel. Graber v. City of New York*, 8 F. Supp. 2d 343, 350 (S.D.N.Y. 1998) (“the Eleventh Amendment does not protect states from suit by the federal government”).

Because the NY Defendants lack immunity, they instead argue that, in their official capacities, they are not “people” who can violate federal statutes. Mem. at 16. But they are incorrect again, because the Supreme Court has ruled that state officials are “people” for the purpose of federal statutory compliance when they are sued for prospective injunctive relief—exactly as the Government has done here. “Of course a state official in his or her official capacity, when sued for injunctive relief, would be a person under § 1983 because official-capacity actions for prospective relief are not treated as actions against the State.” *Will v. Michigan Dep’t of State*

Police, 491 U.S. 58, 71 n.10 (1989); *Kentucky v. Graham*, 473 U.S. 159, 167 n.14 (1985) (noting that “official-capacity actions for prospective relief are not treated as actions against the State.”).²

Accepting the NY Defendants’ argument would require the Court to rule that the Defendants are “people” for the purpose of prospective injunctive relief under 42 U.S.C. § 1983 (which the Supreme Court has ruled that they are), yet that they are not “people” for the purpose of prospective injunctive relief under 18 U.S.C. § 1345 or § 1035. There is no distinction between the two concepts, and the Court should decline the NY Defendants’ invitation to fashion one. Instead, as in any civil action against state officials in their official capacities, “a court need only conduct a straightforward inquiry into whether the complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.” *Verizon Maryland, Inc. v. Pub. Serv. Comm’n of Maryland*, 535 U.S. 635, 636, (2002). This inquiry is easily satisfied here: the Government seeks future-looking injunctive relief enjoining further violations of federal law. Compl. ¶¶ 134-137.

The NY Defendants also argue that, because they cannot be criminally prosecuted in their official capacities, they are not capable of violating Section 1035 in their official capacities and hence cannot be enjoined from violating it. Mem. at 16-17. This is not a criminal prosecution, so this case does not present the question of whether a state official can be criminally prosecuted for a Title 18 offense in her official capacity. *United States v. Brown*, 988 F.2d 658, 663 (6th Cir.

² The NY Defendants cite cases declining to apply the *Ex Parte Young* rule, but those are entirely distinguishable and were Eleventh Amendment cases in any event. For example, *Pennhurst State Sch. & Hosp. v. Halderman* failed because it was “a suit against state officials on the basis of state law,” 465 U.S. 89, 106 (1984), while *Whole Woman’s Health v. Jackson* involved individuals deemed to lack connection with enforcement of the relevant act. 595 U.S. 30, 43 (2021). Neither of these situations is present here.

1993) (“Actions under section 1345 are civil prosecutions, rather than criminal prosecutions.”). Instead, Section 1345 creates a *civil* remedy whereby the Attorney General can obtain *prospective injunctive relief* against “person[s]” violating federal law—exactly what the Supreme Court has said is permissible against state officials in their official capacities, who are “people” for this specific purpose.

The NY Defendants further mischaracterize this lawsuit as an impermissible attempt to enjoin New York’s sovereign actions through its agents. But injunctive relief preventing two state officials from violating federal statutes does not violate state sovereignty any more than the existence of federal law does. Because federal law is supreme, the state action would need to give way to federal law in any event. *United States v. State of Tex.*, 143 U.S. 621 at 642. Defendants badly misapply the anti-commandeering doctrine. That doctrine does not hinder “the power of federal *courts* to order state officials to comply with federal law.” *New York v. United States*, 505 U.S. 144, 179 (1992) (noting that “federal law [is] paramount over the contrary positions of state officials”). The anti-commandeering doctrine more narrowly precludes the federal government from purporting to compel states to require or prohibit certain legislative or regulatory acts. *See State v. Dep’t of Just.*, 951 F.3d 84, 112 (2d Cir. 2020) (“The Federal Government [may not] ... command the States’ officers ... to administer or enforce a federal regulatory program.”); *Murphy v. Nat’l Collegiate Athletic Ass’n*, 584 U.S. 453, 474 (2018). But as should be plain, there is no such effort contemplated here to conscript state officials or to forcibly direct state legislation in a manner that would even implicate the doctrine. Rather, the government seeks an injunction ensuring basic compliance of two state officials with applicable federal laws regarding truth-telling

that already apply to federal healthcare programs—and that, for good measure, are entirely agnostic as to any state legislative or regulatory agenda.

Despite NY Defendants’ invective, this lawsuit does not seek to constrain, or commandeer, New York state’s policymaking or administration of CDPAP. Instead, this is a textbook, official-capacity injunction action to enforce federal law, and NY Defendants’ threshold challenge fails.

C. The Complaint Sufficiently Pleads All Elements of 18 U.S.C. § 1035

As an initial matter, the NY Defendants are incorrect that the United States must plead the claim against them with particularity under Fed. R. Civ. P. 9(b). To establish a violation under 18 U.S.C. § 1035, the Government must show (1) the Defendant made a false statement or concealed a fact, (2) the Defendant acted knowingly and willfully, (3) the concealed fact or false statement was material, and (4) the false statement or concealed fact was made “in connection with the delivery of or payment for health care benefits.”

No element of Section 1035 necessarily includes fraud as contemplated by Rule 9(b), and the Government has not alleged in the claim against the NY Defendants that they were motivated by a fraudulent intent to obtain money or property—a necessary element of a fraud claim. *United States v. Natale*, 719 F.3d 719, 745 (7th Cir. 2013) (“[Section] 1035 requires no specific intent to deceive. The only intent relevant . . . was whether [the Defendant] knowingly and willfully included false statements.”).

Nor does the fact that many elements of the Complaint do sound in fraud *against PPL* require the Government to plead the allegations against the NY Defendants with particularity. “Many district courts—and the Second Circuit—have held that certain [statutory] claims that do not sound in fraud are not subject to heightened pleading requirements merely because they are

asserted alongside fraud claims, and those decisions are directly analogous here.” *E.g.*, *SEC v. Cabalar*, No. CV 24-7274, 2026 WL 1998797, at *3 (E.D.N.Y. July 10, 2026). Hence, the Court should deny the NY Defendants’ motion at the outset because the goal of the NY Defendants as alleged in the claim asserted against them was to tell misrepresentations to effectuate the CDPAP transition at all costs, Compl. ¶135, not to fraudulently obtain money and property. Because these claims are “analytically distinct, even if overlapping conduct forms the basis for both [fraud and non-fraud claims],” *id.*, Rule 9(b) does not apply. As the Defendants do not even argue that the Complaint is infirm under the notice pleading standards of Rule 8(a), the Court should deny the motion on this basis.

However, even if Rule 9(b) applies, the Government has amply met it here. Indeed, the Government’s complaint goes into extensive detail about the underlying scheme and describes with particularity how the New York Defendants plausibly violated each element of 18 U.S.C. § 1035. The Government also fulfills its duty under Rule 9(b), which “requires that a plaintiff set forth the who, what, when, where and how of the alleged fraud.” *United States v. Siemens Med. Sols. USA, Inc.*, No. 21-CV-1947 (MKB), 2023 WL 6050115, at *5 (E.D.N.Y. Sept. 14, 2023). Here, the Government filed a 57-page complaint detailing the New York Defendants’ misconduct in comprehensive detail—replete with quotations, a timeline, and screenshots of key documents. These detailed allegations easily satisfy Rule 9(b). The Government’s complaint meets all the criteria necessary to establish a violation under 18 U.S.C. § 1035.

1. Element 1: False and Misleading Statements by NY Defendants

The Complaint contains numerous plausible allegations about how the New York Defendants made false statements throughout all stages prior to and during the bidding process

and during the implementation of the PPL contract. The NY Defendants allege that concealment of material facts is not actionable under Section 1035 unless a person has a “duty to disclose,” but they vastly overstate this limited precedent. Mem. at 21. Under false-statements statutes, when a person voluntarily chooses to make statements, the person must not make false statements or fail to disclose relevant material facts on those topics. *United States v. Stewart*, 433 F.3d 273, 318 (2d Cir. 2006). Here, the issue is academic because DOH and Bassiri’s statements—including his statements in sworn court filings—are plausibly alleged to be false or to conceal material facts in numerous respects. Regardless of whether DOH and Bassiri had a *duty to disclose*, they *did disclose* on these topics. *Id.*

Request For Proposals (RFP) Process: First, the Complaint sufficiently alleges that the NY Defendants made various false statements and concealed material facts related to the CDPAP contract procurement process. Compl. ¶¶ 18-23. The Complaint alleges that the NY Defendants conducted a procurement process with a purported level playing field that was secretly slanted towards PPL, *id.*,—through PPL’s effective pre-selection, DOH’s pretextual elimination of other bidders, *id.* ¶¶ 25-30, and followed by special, secret allowances for PPL to violate the terms of the RFP, *id.* ¶¶ 58-66. The Complaint alleges that, facing scrutiny, the NY Defendants have subsequently covered up the true extent of pre-RFP coordination between DOH and PPL regarding the contract. *Id.* ¶¶ 67-89; 108-113. These allegations plausibly demonstrate false statements or concealment of material facts related to the RFP process.

The Government supports these allegations with detailed evidence showing substantial pre-RFP announcement coordination between DOH and PPL regarding the contract, including DOH’s invitation and discussion of PPL’s implementation plan for the contract and additional substantive

exchanges between PPL and DOH regarding PPL's planned approach to performing the contract. Compl. ¶¶ 18-23. Perhaps most glaringly, the Complaint alleges that Defendant Bassiri personally participated in secret pre-bid award discussion with PPL regarding its implementation plan for the contract, and then proceeded to also serve as an official scorer of PPL's bid submission. *Id.* ¶¶ 22, 28, 33, 35. The Complaint alleges that not only was the extent of this pre-award coordination kept secret at the time it first unfolded, but that the NY Defendants have subsequently misrepresented its extent in response to more recent scrutiny. *Id.* ¶¶ 112-3.

In response to these things, the NY Defendants argue the facts, asking the Court to consider scoring sheets for the CDPAP contract. Mem. at 8. First, the Court would need to convert this motion into a summary judgment motion to adjudicate this issue. *Friedl v. City of New York*, 210 F.3d 79, 84 (2d Cir. 2000). But more importantly, the NY Defendants misconstrue the Complaint, which alleges that Bassiri scored PPL's bid highly in categories where PPL's fraudulent RFP made false statements, but does not allege that Bassiri's absolute score was necessarily higher or lower than the other scorers' scores. Compl. ¶¶ 28,33,35-36. Because it was a competition between PPL and the other bidders, and not a competition between Bassiri and the other scorers, Bassiri's scores for PPL are far less relevant than the scores Bassiri gave the few other qualified bidders—such as the 107 points Bassiri gave FreedomCare LLC in the exhibit the NY Defendants filed, compared to the 146 points he gave to PPL. Mot. Ex. A at 3-4 (summing the “Amir Bassiri” column on each page). If Bassiri wanted to ensure PPL won the contract, he would do exactly what he is alleged to have done—secretly coordinate an implementation plan with PPL prior to the bid, then score PPL's bid first, then try to disqualify everyone else, and then give lower scores to the subsequent

qualified bidders. He would not have needed to ensure that his specific scores for PPL were higher or lower than the scores *the other scorers* (who were Bassiri's employees in any event) gave PPL.

In fact, the Complaint alleges that PPL's bid was scored before some other bidders were even *qualified*, Compl. ¶ 28, which is not the order in which Bassiri said under oath that the process unfolded. *See* Mot. Ex. B ¶¶ 11-16. The Complaint also plausibly alleges that Bassiri participated in this pretextual campaign to knock out PPL's competition, having been part of communications where DOH attempted to disqualify rival bidders, including in last-second fashion and based on arbitrary technicalities. Compl. ¶¶ 27-29. For example, purported grounds for disqualification of PPL's competitors included DOH's difficulty accessing a timely submitted PDF, and a company's new subsidiary in New York's lack of FI services in another state—even though the bidder provided FI services in 14 states. *Id.* ¶ 29. All of these irregularities, when combined with the secret implementation meetings with PPL before the RFP was even announced, are strongly suggestive of a process in which the outcome was pre-determined.

CDPAP Transition: The Complaint also plausibly alleges misrepresentations and concealment of material facts, and a conspiracy to do so, by the NY Defendants relating to the status and progress of the CDPAP transition. Specifically, the Complaint alleges that when the NY Defendants realized—based on their own internal discussions and hard data—that it was virtually impossible PPL would manage to complete the transition within the contractually required three-month timeframe, they decided to conceal this from the public in order to head off mounting public scrutiny. *Id.* ¶¶ 75-80. The Complaint alleges that, the NY Defendants disseminated misleading public bulletins to paper over these facts, and repeatedly elected to hide the truth regarding the transition's halting progress while downplaying the associated, imminent risks of disruptions to

patient care and caregiver pay. *Id.* ¶¶ 80-89. These allegations plausibly show intertwined misrepresentations by the NY Defendants: first, misrepresentations regarding whether the CDPAP transition was likely to be completed within the contractually required three-month transition timeframe, and, second, misrepresentations regarding whether there would likely be systemic disruptions to patient care and caregiver pay ensuing from a botched transition. *Id.* ¶¶ 67-89.

CDPAP Financial Structure and Purported Cost Savings: The Complaint also plausibly alleges that the NY Defendants have concealed material facts and made false statements related to PPL's pursuit of excess, contractually unauthorized profits from administering CDPAP as the sole FI. The Defendants' arguments in this section, Mem. at 24-27, ignore the allegations in the Complaint and would require the Court to find facts in the Defendants' favor. The court cannot dismiss the case at this juncture, because the court must draw inferences in favor of the government at this stage. *Iqbal*, 556 U.S. at 663–64; *Twombly*, 550 U.S. at 555–56; *LaFaro*, 570 F.3d at 475. The allegations in the Complaint state that the purpose and meaning of the transition writ large—expressed in the RFP, Q&A responses, and contract, as well as in the legislature's action in transitioning to a single FI—was to do away with a system where the fiscal intermediaries could profit from the direct-care billing rate. Compl. ¶¶37-39. What the Complaint plausibly alleges is that PPL and DOH—despite the text and purpose of the transition, RFP, Q&A responses, and contract—have maintained a system in which PPL is allowed to bill MCOs at inflated rates, and has not meaningful guardrails making it adhere to the RFP, Q&A responses, and contract.

The Defendants' arguments that the contract and RFP permits the conduct alleged in the Complaint, and that the Complaint should therefore be dismissed, are legally and factually meritless. Mem. at 24- 26. The Second Circuit has held that a party cannot creatively contract

around federal fraud, *United States v. Weaver*, 860 F.3d 90 (2d Cir. 2017), and this is not a situation where the Court can simply interpret a contract as a matter of law and declare that no fraud has occurred. In particular, the allegations plausibly suggest that DOH learned about—and internally expressed alarm regarding—PPL’s planned manipulation of the direct-care rate to promote PPL’s own ability to cover costs and generate additional profits, *id.* ¶¶ 62-65. The Complaint alleges that DOH internally expressed its concerns that there were insufficient “guardrails” in place to prevent PPL’s unauthorized profit-taking from negating the “expected savings.” *Id.* ¶ 63. And Defendant Bassiri personally criticized PPL’s self-serving cost misclassifications—designed to generate extra marginal revenues for PPL to protect its own profits with—as “opportunistic” and destined to “backfire.” *Id.* ¶ 65. Yet, as alleged, DOH then failed to address this misconduct despite its recognition that PPL’s pursuit of an unauthorized windfall would effectively negate the substantial cost-savings to the state (and taxpayers) that were a *raison d’être* of the transition to a sole FI in the first place. *See, e.g., id.* ¶¶ 6, 54, 64.

DOH then allegedly compounded its failure to enforce the financial requirements of the CDPAP contract by continuing to tout massive cost-savings purportedly flowing to the state from the PPL transition despite, as alleged, its internal knowledge that these promised savings had been eroded by PPL’s excessive profit-taking. *Id.* ¶¶ 62-63. This includes through equivocal and misleading statements provided in sworn senate testimony by DOH, *id.* ¶ 111, and in sworn court filings submitted by Defendant Bassiri in recent litigation. *Id.* ¶ 112. The Complaint plausibly alleges that, to cover up their knowledge that the significant promised cost savings have not in fact occurred, the NY Defendants have also misrepresented what they know to be the higher-than-

expected costs PPL has caused for the state and MCOs, while also extolling PPL's bid as the cheapest bid. *Id.* ¶¶ 111-112.

2. Element 2: Knowingly and Willfully

Section 1035 requires the Government to show that the Defendants acted “knowingly and willfully.” The NY Defendants are incorrect that Section 1035 requires the government to show that the Defendants “acted with knowledge that [their] conduct was unlawful,” because the Second Circuit has ruled that “[w]illfulness relates to the making of the false statement, not to knowledge that the statement would violate a law.” *United States v. Carrasquillo*, 239 F. App'x 634, 636 (2d Cir. 2007). This makes sense, because “[t]he general rule in criminal cases is that the government need not prove a knowing violation of the law. . . . The word ‘willful’ . . . means no more than that the person charged with the duty knows what he is doing. It does not mean that, in addition, he must suppose that he is breaking the law.” *United States v. Gabriel*, 125 F.3d 89, 101 (2d Cir. 1997).

Even if other aspects of the Section 1035 claim need to be pleaded with particularity, the NY Defendants' knowledge and willfulness can be generally pleaded. Because “it would be unrealistic to expect a plaintiff to read a defendant's actual state of mind . . . [Rule] 9(b) permits plaintiffs to allege fraudulent intent generally while the circumstances amounting to fraud must be averred with particularity.” *Protter v. Nathan's Famous Sys., Inc.*, 904 F. Supp. 101, 106 (E.D.N.Y. 1995).

The Complaint plausibly alleges that the NY Defendants acted knowingly and willfully and is replete with specific evidence of the requisite mens rea. Specifically, it alleges that prior to and during the RFP and bid process, Defendant Bassiri and DOH operated knowingly and willfully

to ensure PPL’s selection as the SFI, and then either misrepresented or hid the true facts about the procurement from the CDPAP community and legislators. Compl. ¶ 18-36. During the transition process, Bassiri and DOH acted knowingly and willfully when they concealed the failures of the registration progress from the public and made numerous misrepresentations about the progress of the transition. *Id.* ¶ 74-89.

Both NY Defendants continue to knowingly and willfully make false statements about the cost and non-existent savings of the SFI transition. Bassiri is alleged to know that the cost of PPL’s bid would be much higher than what he stated in a state-court affidavit. Compl. ¶ 112. The Complaint also alleges Bassiri knew that PPL’s billing plan was “opportunistic” and that allowing PPL to obtain these revenues would “backfire.” *Id.* ¶ 65. DOH staff members sounded the alarm that PPL was attempting to make profits in excess of the “guardrails” in place. *Id.* ¶ 63. Bassiri is alleged to have known that the transition would potentially leave tens of thousands of people with disabilities without care after April 1, 2025. *Id.* ¶ 84. These internal statements, especially when contrasted with the contract and other public statements DOH and PPL have made, adequately allege that Bassiri and DOH acted with the requisite mens rea. *Id.* ¶108-114.

3. Element 3: Materiality

Section 1035 requires materiality, but “materiality requires only a potentiality of influencing the decisionmaker; it does not require actual reliance.” *United States v. Natale*, 719 F.3d 719, 738 (7th Cir. 2013). In the Section 1035 context, this means that “a false statement must ‘ha[ve] a natural tendency to influence, or [be] capable of influencing, the decision of the decision-making body to which it was addressed.’” *United States v. Comprehensive Healthcare Mgmt. Servs. LLC*, No. 25-2029, 2026 U.S. App. LEXIS 19728, at *6-7 (3d Cir. July 7, 2026).

The false statements and concealed facts the NY Defendants make are far from mere “seemingly innocent ‘white lies,’” and they absolutely had an impact in the ultimate result of impacting decision makers and decision-making bodies. *United States v. Natale*, 719 F.3d at 735 n.7, 735. For example, the NY Defendants’ false statements prior to and during the bid process led to PPL’s ultimate selection as the SFI. Compl. ¶¶ 24-36. The NY Defendants are also plausibly alleged to have misled CDPAP patients and caregivers. *Id.* ¶¶ 67-89. The misrepresentations to patients and caregivers were designed to get them to sign up with PPL as customers and employees and were plausibly material to their decisions. *Id.* ¶¶ 104-07. Furthermore, Defendant Bassiri’s false statement to a New York state court that PPL’s bid would cost \$1 billion—when he knew it would cost far more because PPL actually kept the “spread” billing system New York said it was doing away with—was obviously material to a “decisionmaker” (*i.e.*, the judge) and was a falsehood or misrepresentation designed to deflect attention away from the misconduct described in the Complaint. *Id.* ¶ 112.

4. Element 4: In Connection with the Delivery of Or Payment for Health Care Benefits Items or Services

The false statements made by the NY Defendants are plausibly alleged to be “in connection with the delivery of or payment for health care benefits, items or services.” This element of 18 U.S.C. § 1035(a) is not limited to traditional, mine-run health care fraud, as the New York Defendants argue, but is intended to “combat” other conduct as well. *United States v. Cox*, No. 2:05-CR-16, 2006 U.S. Dist. LEXIS 17181, at *17-18 (D. Vt. Mar. 28, 2006).

Indeed, *Cox* rejected a remarkably similar argument in a Section 1035 case where a defendant was charged with, among other things, willfully understating the cost of a major hospital

renovation in order to avoid regulatory scrutiny. *Id.* Holding that the phrase “in connection with the delivery of or payment for health care benefits, items, or services” should be broadly construed to effectuate its purpose, the court found that Section 1035 is not limited to a “particular species of health care fraud.” *Id.* The New York Defendants’ false statements and conspiratorial acts are alleged to have been designed to effectuate the PPL transition at all costs and to deflect CDPAP stakeholders’ attention from what was going on behind the scenes—which was that an out-of-control, favored vendor had run roughshod over the “guardrails” intended to prevent fraud and waste “in connection with . . . payment for” CDPAP services. Compl. ¶ 63. The New York Defendants’ statements and conspiratorial acts represent the exact type of misconduct the statute combats.

The NY Defendants also attempt to graft an additional requirement not found in the statutory language—arguing that the false statements proscribed by Section 1035 must be material to the “payers” of the claims. This limitation is not in the statute and was also rejected by the court in *Cox*, where the Section 1035 false statements were made to, among others, “state regulators”—not the payers of the claims in question. 2006 U.S. Dist. LEXIS 17181, at *17-18; *see United States v. Baldwin*, 277 F. Supp. 2d 67, 69 (D.D.C. 2003) (rejecting similar argument that healthcare fraud must be directed at specific “reimbursement mechanisms”). The NY Defendants’ proposed reading would also render key parts aspects of the statute surplusage, rendering an offense under Section 1035 indistinguishable from, among other things, health care fraud under 18 U.S.C. § 1347. “A statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.” *Duncan v. Walker*, 533 U.S. 167, 174 (2001). In other words, Congress could have stated that the false statements proscribed by

Section 1035 must be directed at a person paying a bill, but it did not.

Among many other examples, the Complaint alleges that the NY Defendants made false statements to: CDPAP patients and caregivers, to whom the statements were material to their decisions to participate in the program or engage in public advocacy about the program, Compl. ¶¶71-74; and to New York legislators, to whom the statements were material to their legislative decisionmaking about the program. *Id.* ¶¶ 108-111. Neither CDPAP patients, caregivers, or New York state lawmakers were “payers” of the claims in question, but the statute proscribes generally making material false statements about the administration of a federal health care benefit program—exactly what the Government has alleged the NY Defendants did.

D. The Complaint Plausibly Alleges a Violation of 18 U.S.C. § 371

The NY Defendants make a two-fold argument that the Government has not alleged a violation of § 371. First, they claim that § 371 does not impose criminal liability on the state. Second, they argue that the complaint does not sufficiently allege any of the elements of § 371. Both arguments are incorrect.

As to the first argument, which is addressed in *supra* A, this is a civil action, and the Government is entitled to prospective *civil* injunctive relief against the NY Defendants as individuals for violating federal law. If state officials are “people” when sued for prospective injunctive relief under 42 U.S.C. 1983, which they are, *Will*, 491 U.S. 58 at n.10, then they are also “people” who can violate Section 371 when sued for prospective injunctive relief.

As to the second argument, the Government successfully pled all elements of § 371. The Complaint clearly articulates “(1) an agreement between the defendant[s] and at least one other person to commit an offense; (2) that the defendant[s] knowingly participated in the conspiracy

with the specific intent to commit the illegal object of the conspiracy, and; (3) that during the conspiracy an overt act in furtherance of the illegal objective was committed by a member of the conspiracy.” *United States v. Mermelstein*, 487 F. Supp. 2d 242, 251 (E.D.N.Y. 2007).

Alleging a conspiracy “does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal agreement.” *Anderson News, L.L.C. v. Am. Media, Inc.*, 680 F.3d 162, 184 (2d Cir. 2012). The Government has provided ample allegations that an agreement was made, and that the NY Defendants are engaged in overt acts in furtherance of an illegal objective—to improperly install and keep PPL as New York’s SFI. “[A]n overt act need not be inherently criminal to support a conspiracy conviction.” *United States v. Montour*, 944 F.2d 1019, 1026 (2d Cir. 1991).

Here, the Complaint alleges that the NY Defendants: (1) solicited PPL to be the sole FI, Compl. ¶¶21-22; (2) participated in a sham bid process to select PPL above other bidders, *id.* ¶28; (3) personally allowed PPL to take more money than allowed under the contract, *id.* ¶¶58-66; (4) brushed aside personal concerns about PPL being “opportunistic” and predicted that allowing PPL to engage in this conduct would “backfire,” *id.* ¶65; and (5) misrepresented the true cost of the PPL contract in litigation, *id.* ¶112. These allegations, which obviously required coordination and agreement with PPL, are the essence of a conspiracy to make false statements.

The NY Defendants’ motion seeks to minimize the Defendants’ actions by labelling them as “naked assertion[s],” Mem. at 20, but the Complaint contains far, far more—such as an *actual alleged agreement* between the NY Defendants and PPL to keep their pre-bid coordination a secret, Compl. ¶23, which the Defendants then effectuated when PPL lied to the New York State Senate

about pre-bid coordination. *Id.* ¶110. If that is not a potential conspiracy to make false statements and material omissions, nothing is.

These actions show far more than innocent parallel action where the evidence is in equipoise about what was actually going on behind the scenes—instead, these allegations suggest a scheme to make false statements in order to prop up PPL’s selection as statewide FI and its continuing functioning in that role.

V. CONCLUSION

The Court should deny the NY Defendants’ motion to dismiss in its entirety. However, if the Court finds that the pleading fails to satisfy Rule 9(b), the United States respectfully requests leave to amend its Complaint pursuant to FRCP 15. “Complaints dismissed under Rule 9(b) are ‘almost always’ dismissed with leave to amend.” *Luce v. Edelstein*, 802 F.2d 49, 56 (2d Cir. 1986).

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2026, I caused the foregoing document to be served on all counsel of record through electronic mail.