

2023 WL 2966793 (N.J.Super.L.) (Trial Order)  
Superior Court of New Jersey, Law Division.  
Essex County

SAME DAY PROCEDURES, LLC, Plaintiff,

v.

UNITED HEALTHCARE INS. CO., a/k/a UnitedHealth Group Inc.; Oxford Health Ins. Inc., d/b/a UnitedHealthcare-Oxford; Unitedhealthcare of New Jersey, Inc.; United Healthcare Ins. Co of N.Y.; United Healthcare Servs., Inc.; Unitedhealthcare Servs., LLC; Multiplan, Inc.; Viant, Inc., a/k/a Viant Health Payments Solutions; NJ Building Laborers Statewide Benefit Funds; Nokia of America, Corp., a/k/a Nokia Bell Labs and/or Alcatel-Lucent USA; Sims Group USA Holding Corp., a/k/a Sims Metal Management; Jpmorgan Chase & Co.; Morgan Stanley; Goldman Sachs & Co.; AMB Indus. Inc.; and ABC Corps. 1-100, Defendants.

No. ESX-L-007971-20.

April 4, 2023.

### Order

[Rachel R. Hager](#), Esq. (ID No. 031311994), Finazzo Cossolini O'leary, Meola & Hager, LLC, 67 East Park Place, Suite 901, Morristown, New Jersey 07960, (973) 343-4960 -and- [Errol King](#), Esq. (admitted pro hac vice), [Taylor J. Crousillac](#), Esq. (admitted pro hac vice), [Katherine C. Mannino](#), Esq. (admitted pro hac vice), Phelps Dunbar, LLP, II City Plaza, 400 Convention Street, Suite 1100, Baton Rouge, Louisiana 70802, (225) 346-0285, Attorneys for Defendants, Viant, Inc. and MultiPlan, Inc.

[Keith E. Lynott](#), Judge.

\*1 This matter, having been opened by the Court by Finazzo Cossolini O'Leary Meola & Hager, LLC, and Phelps Dunbar, LLP, attorneys for Defendants, Viant, Inc., and MultiPlan, Inc., upon notice to all counsel of record, for an Order pursuant to Rule 4:6-2(e) dismissing with prejudice Plaintiff's Amended Complaint against Defendants, Viant, Inc., and Multiplan, Inc., for failure to state a claim against them upon which relief can be granted, and the Court having reviewed the moving papers and any opposition and reply papers, and for good cause shown:

**IT IS ON THIS** 4 day of April 2023,

**ORDERED** that Defendants, Viant, Inc., and MultiPlan, Inc.'s Motion to Dismiss Plaintiff's Amended Complaint is hereby **GRANTED IN PART and DENIED IN PART**;

1. The Court grants in part the motion of Viant, Inc. and Multiplan, Inc. (collectively, "Viant") and dismisses the claims as to Viant in the Fourth, Sixth and Seventh Counts without prejudice to the right to re-plead, if desired, as to any or all such Counts to address the deficiencies noted herein, such re-pleaded Complaint to be filed within 20-days from posting of the Order.
2. The Court otherwise denies the Defendants' motions.

**IT IS FURTHER ORDERED** that service of this Order shall be deemed effectuated upon all parties upon its upload to eCourts. Pursuant to [Rule](#) 1:5-1(a), movant shall serve a copy of this Order on all parties not served electronically within seven (7) days of the date of this Order.

<<signature>>

HON. KEITH E. LYNOTT, J.S.C.

Opposed

Unopposed

See the Statement of Reasons entered contemporaneously with the Order herewith.

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Superior Court of New Jersey, Law Division.  
Essex County

SAME DAY PROCEDURES, LLC, Plaintiff,

v.

UNITED HEALTHCARE INS. CO., a/k/a UnitedHealth Group Inc.; Oxford Health Ins. Inc., d/b/a UnitedHealthcare-Oxford; Unitedhealthcare of New Jersey, Inc.; United Healthcare Ins. Co. of N.Y.; United Healthcare Servs., Inc.; Unitedhealthcare Servs., LLC.; Multiplan, Inc.; Viant, Inc., a/k/a Viant Health Payments Solutions; NJ Building Laborers Statewide Benefit Funds; Nokia of America, Corp., a/k/a Nokia Bell Labs and/or Alcatel-Lucent USA; Sims Group USA Holding Corp., a/k/a SIMS Metal Management; Jpmorgan Chase & Co.; Morgan Stanley; Goldman Sachs & Co.; ABM Indus. Inc.; and ABC Corps. 1-100, Defendants.

No. ESX-L-007971-20.

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### Order

Stradley, Ronon, Stevens & Young, LLP, A Pennsylvania Limited Liability Partnership, By: [Francis X. Manning](#), Esquire, (ID:008431991), Robert J. Norcia, Esquire, (ID: 165172015), 457 Haddonfield Road, Suite 100, Cherry Hill, NJ 08002, Tel: (856) 321-2403, Fax: (856) 321-2415, Email: [fmanning@stradley.com](mailto:fmanning@stradley.com); [morcia@stradley.com](mailto:morcia@stradley.com).

**\*1** CBLP ACTION

**THIS MATTER** having been opened to the court by Stradley Ronon Stevens & Young, LLP, counsel for the United Defendants and the Payor Defendants, for an Order dismissing Plaintiff Same Day Procedure, LLC's Amended Complaint, and the Court having considered the papers in support and in opposition thereto, and for good cause shown:

**IT IS ON THIS** 4 day of April, 2023,

**ORDERED** that the United Defendants' and the Payor Defendants' Motion to Dismiss Plaintiff's Amended Complaint is **GRANTED IN PART and DENIED IN PART**;

1. The Court grants in part the motion of Viant, Inc. and Multiplan, Inc. (collectively, "Viant") and dismisses the claims as to Viant in the Fourth, Sixth and Seventh Counts without prejudice to the right to re-plead, if desired, as to any or all such Counts to address the deficiencies noted herein, such re-pleaded Complaint to be filed within 20-days from posting of the Order.
2. The Court otherwise denies the Defendants' motions.

**IT IS FURTHER ORDERED** that a copy of this Order be served upon all parties and/or their attorneys, if any, within 5 days of the date listed above.

<<signature>>

J.S.C.

x opposed

\_\_\_ unopposed


### **Statement of Reasons**


In this action brought by a medical practice against numerous Defendants alleging underpayment for medical services rendered to patients, the Defendants move to dismiss, in whole or in part, the Amended Complaint and Jury Demand (the “Complaint”) of the Plaintiffs Same Day Procedures LLC (“Same Day”) pursuant to R. 4:6-2(e) for failure to state a claim. Specifically, the Defendants United Healthcare Ins. Co. a/k/a UnitedHealth Group, Inc, Oxford Health Ins. Inc. d/b/a United Healthcare-Oxford, United Healthcare Ins. Co. of New Jersey, Inc., United Healthcare Ins. Co. of N.Y., United Healthcare Servs., Inc and United Healthcare Servs., LLC (collectively, the “United Defendants”), along with the Defendants NJ Building Laborers Statewide Benefit Funds, Nokia of America Corp a/k/a Nokia Bell Labs and/or Alcatel-Lucent USA, SIMS Group USA Holding Corp a/k/a SIMS Metal Management, JPMorgan Chase & Co., Morgan Stanley, Goldman Sachs & Co. and ASM Indus. Inc. (collectively the “Payor Defendants”) move to dismiss the Complaint in part. Via a separate motion, the Defendants Viant, Inc d/b/a Viant Health Payments Solutions, and Multiplan, Inc. (collectively, “Viant”) move to dismiss Same Day's Complaint as against them in its entirety.

For the reasons set forth herein, the Court grants in part and denies in part these motions. It finds, under the liberal standards applicable to assessing the legal sufficiency of pleadings, that the Complaint states viable claims for relief. However, it also dismisses certain claims subject to a right to re-plead.

#### **I**

As these are motions to dismiss, the Court is required to examine the Complaint through a generous and hospitable lens that favors the Plaintiff. It accepts as true the factual averments of the Complaint and confers on the Plaintiff the benefit of all reasonable inferences. At the same time, the Court is not required to accept as true mere legal conclusions asserted as facts.

\*2 The Court is not concerned at this stage of the case with the Plaintiff's ability to prove its allegations. Instead, its function is to scrutinize the Complaint rigorously to determine if it is possible to discern the “fundament” of a cause of action from even an “obscure statement” of the claim.  [Printing Mart-Morristown, Inc. v. Sharp Elecs. Corp.](#), 116 N. J. 739, 746 (1989).

Ordinarily, the Court determines the legal sufficiency of a complaint without reference to or reliance upon facts or materials de hors the pleading itself. An exception exists for materials attached to the Complaint, facts of public record, or documents or factual material that are integral to the Plaintiff's claims.  [Banco Popular N. Am. v. Gandi](#), 184 N. J. 161 (2005).

New Jersey courts grant motions to dismiss only in rare instances. When they do so, the dismissal is normally without prejudice to the right to re-plead to allege additional facts that address a deficiency identified by the Court. However, where the Complaint is “palpably insufficient”, the Court will dismiss the same. [Rieder v. State, Dep't of Transp.](#), 221 N.J. Super. 547, 552 (App. Div. 1987).

#### **II**

The facts, drawn from the Same Day's Complaint and accepted as true, for purposes of this motion only, are as follows.

Same Day is a medical service provider located in Clifton. It was an out-of-network provider with respect to the United and Payor Defendants and provided “pre-authorized, medically necessary” services to patients who were members or beneficiaries

of health care plans ESX-L-007971-20 04/04/2023 Pg 5 of 32 Trans ID: LCV20231139329 sponsored, funded, controlled, underwritten and or administered by the United Defendants and the Payor Defendants.

The United Defendants are insurance companies or affiliates that “sponsored, funded, operated, controlled, administered and/or underwrote health benefit plans” for the patients whose treatment - and the claimed underpayment for the same - are the subject of this action. The Payor Defendants likewise “sponsored, funded, operated, controlled and/or administered a health benefit plan” for the patients identified in the Complaint by their initials.

Viant is a “healthcare repricing company[y].” Repricing refers to “programs of health care insurers, payors and administrators to reduce standard fee-or-service rates of out-of-network healthcare providers”, including by “controversial back-end negotiations (after services rendered, unilateral discounting rate).”

The Complaint alleges that the United Defendants and Viant were agents of the Payor Defendants in relation to all the matters asserted in the Complaint. In addition, according to the Complaint, Viant was an agent of the United Defendants.

The Complaint alleges that the “defendants” issued “oral pre-authorizations to [Same Day]” for the treatment of the patients identified on a list - the Disputed Claims List or “DCL” - “directly or via agency.” It avers that Same Day “relied on and was induced to render services with the expectation to be compensated consistent with the statements, representations, conduct of defendants and/or usage of trade.” The Complaint avers that “[a]fter rendering services, [Same Day] billed usual, customary and reasonable (“UCR”) charges.” This is the fee that out-of-network providers, like Same Day, “normally charge to patients in the free market, *i.e.*, without an agreement with an insurance company or other payor to discount market rates in exchange for some form of consideration from an insurer, payor or administrator.” The UCR is the “usual charge” for the particular service charged by providers in the same geographic area with similar training and experience.

\*3 The Disputed Claims List is the is a list of 56 patients identified by initials, a United ID Number, a date of service and the amount billed. The Plaintiff alleges that, in all but four cases, a specifically-named individual (first name only) pre-authorized the services that Same Day then rendered to the patient with payment to be made at a percentage of UCR ranging from 70% to 90% or, in some cases, advised that pre-authorization was not necessary and that payment would be made at a percentage of UCR. In four instances, the Plaintiff asserts that that an unidentified individual represented that services were pre-authorized or that pre-authorization was not required.

Same Day avers that, “[c]ontrary to defendants' statements and conduct during pre-authorization, instead of reimbursing at UCR rates, the United and Payor Defendants instead [sic] diverted [Same Day's] s claims to codefendant Viant for back-end ‘negotiations.’” The United and Payor Defendants, according to the Complaint, represented to the public, providers and patients that they maintain a program whereby “‘trained negotiators’” interact with providers and “negotiate a ‘mutually acceptable rate of payment’, or the rate paid was pursuant to a ‘contract’ with [Same Day].” (Emphasis in original).

Same Day alleges that this representation was false and there were no good faith negotiations. Instead, according to the Complaint, what actually occurred was unilateral repricing by Viant, in connection with which Viant would vastly understate the UCR rate for the service. United and the Payor Defendants would then adopt the “Viant-determined price” and issue a “gross underpayment” to the provider. The accompanying Explanation of Benefits would represent that the payment was a “fee negotiated agreement”, but this, according to Same Day, was not so.

Same Day contends that this initial payment amount was a “lowball opening to ‘negotiations.’” It asserts that most providers lack the resources and knowledge to negotiate and instead accept the payment and proceed to “balance bill” the patient for the deficiency. Other providers with the resources to challenge the payment “get the runaround” - referrals back and forth as between Viant and the United Defendants. They may receive a nominal increase above the initial payment, but they are then “strongarm[ed]” into accepting “below-UCR compensation.”

The Plaintiff alleges that Viant and the United Defendants receive “kickbacks”, referred to euphemistically as “commissions”, from the Payor Defendants based on the difference between what was paid to the provider and what “should have been paid.” Although the Explanations of Benefits and other correspondence indicate the amount paid was based on a “mutually acceptable rate of payment”, the Plaintiff alleges it was not. Instead, the payment was “unilaterally determined by defendants” without any meaningful negotiations.

The Plaintiff avers that Viant has falsely stated that the amounts paid are based on an “objective UCR analysis”, when this is not so. It asserts that the United Defendants knowingly or negligently adopt the amount determined by Viant to be payable to the provider “in furtherance of [the parties'] mutual financial self-interests.”

The Complaint alleges that the “Defendant” “markets its ‘Viant Facility Usual & Customary Review’ service to the managed care industry by claiming it reduces ‘exposure on over 90% of facility out-of-network charges, with typical savings of 40% or greater.’” It states that Viant claims that its determinations of UCR are based on “sophisticated, proprietary logic and publicly available data’ to reach levels ‘customarily charged by similar providers in the area for equivalent services.’” It asserts the United Defendants represent that Viant’s negotiators are “trained and/or overseen” by them and that the initial payment amount is based on an “extensive database’ and analytics” to determine the appropriate UCR.

\*4 According to the Complaint, the “Defendants” pricing of claims is “far below a valid measure of UCR” and exposes the patients to balance billing of as much as 75% of the reasonable cost of the medical services provided to them. The Plaintiff alleges that Viant’s repricing for the same service randomly differs among patients and even for the same patient, depending on the particular Viant negotiator.

The Plaintiff avers that the United Defendants provide Viant with a “benchmark set by United’s internal corporate policy.” Viant receives instructions to secure a provider’s agreement to pay the lowest amount possible up to the benchmark. Viant’s representatives are aware of the rates achieved by other Viant negotiators. Viant’s compensation increases based on the providers’ acceptance of lower and lower rates below the United Defendants’ benchmark, which “often involves cajoling or bullying of providers.”

Same Day alleges these repricing practices are not based on an “objective analysis” of UCR, but they are instead a “smokescreen to cover up defendants’ self-dealing to enrich themselves at the expense of out-of-network surgical centers and their patients.” It asserts that some Viant representatives have acknowledged using Medicare rates, which have been “untethered to UCR for almost two decades.”

The Plaintiff avers that most patients on the DCL had previously reached their annual patient responsibility at the time of treatment. It contends the United Defendants frequently failed to disclose this fact on Explanations of Benefits, concealing that the “defendants” were responsible for any underpayment of UCR and leading to balance billing of the patients of amounts that “should have been paid by the health insurance plans.”

The Complaint alleges that Same Day filed timely claims for payment “with defendants” with supporting details. The Plaintiff avers that “[e]ven though the services rendered by [Same Day] were pre- approved, medically necessary care, defendants systematically failed to issue proper reimbursement for the services rendered by Same Day to the defendants’ insureds”- the patients identified on the DCL.

Same Day alleges that the “Defendants” were required to make payment to Same Day in accordance with applicable New Jersey “prompt pay’ laws” but failed to do so, entitling Same Day to interest at a 12% rate for late-paid claims. The Plaintiff alleges that it undertook administrative appeals of the underpayments, but the process was futile and Same Day received “boilerplate, perfunctory responses stating the ‘claim was processed correctly’ without any explanation or rationale” or “meaningful reconsideration.” Same Day avers that it engaged in telephonic and written communication “with defendants’ representatives” concerning the claims at issue in this case prior to initiating litigation, but the “defendants were non-responsive.”

Same Day contends the “defendants” intentionally administer the subject plans “in a self-serving manner to lower reimbursement for out-of-network surgical care” in order to increase the “defendants' profits”, because the “defendants and/or their agents have a financial incentive and are compensated based on reduced reimbursement rates to out-of-network providers”, such as Same Day. The Plaintiff asserts the Defendants also seek to discourage insured patients from seeking treatment with out-of-network providers altogether even though such patients pay premiums for access to such providers.

\*5 The Plaintiff contends that “[a]s a matter of routine business practice”, it engaged in regular communications with the Defendants and/or their agents “regarding coverage, reimbursement and other issues.” It asserts that “[t]hroughout the parties' course of dealings and numerous forms of communication and interaction, defendants and/or their agents voluntarily and freely engaged with and dealt directly with [Same Day]” and Same Day “relied in good faith on defendants' conduct and the parties' course of dealings.”

Same Day alleges that the Defendants' payment decisions were based on the United Defendants' “corporate policies”, rather than the terms of the underlying healthcare plans themselves. It asserts the United and Payor Defendants did not provide Viant with the relevant healthcare plans for its repricing activities and that Viant undertakes such activities based on the United Defendants' corporate policies and without knowledge of or reference to the terms and conditions of the subject plans. It contends its claims do not relate to any dispute as to the coverage afforded by such plans, but to the amount of coverage and the alleged failure to reimburse the Plaintiff in the proper amount for its services to the patients.

The Complaint sets forth eleven separate Counts for relief. These Counts purport to state claims for Conspiracy (First Count), Breach of Implied Contract (Second Count), Breach of the Covenant of Good Faith and Fair Dealing (Third Count), Unjust Enrichment and Quantum Meruit (Fourth Count), Promissory Estoppel (Fifth Count), Negligent Misrepresentation (Sixth Count), Fraud (Seventh Count), Negligence (Eighth Count), Tortious Interference with Economic Advantage (Ninth Count), Conversion (Tenth Count) and Violation of New Jersey Prompt Pay Laws (Eleventh Count). The headings to certain of these Counts state that such Count is directed to specific Defendants only. However, the prayers for relief in all Counts demand judgment against all Defendants. In each Count, Same Day claims entitlement to compensatory damages, interest and attorneys' fees and, in connection with some Counts, to punitive and exemplary damages as well.

In the First Count - explicitly lodged against all Defendants - the Plaintiff asserts the United Defendants and Viant “acted in concert to commit an unlawful act and/or to commit an unlawful act by unlawful means.” It contends the Payor Defendants are “also liable by agency for the conspirator [sic] acts of the United Defendants.”

This Count asserts that the “Defendants conspired and entered into a repricing agreement(s) and a clandestine repricing scheme to understate UCR for out-of-network surgical facilities, which they knew would injure and wrong [Same Day].” It alleges that all Defendants “shared and accepted the conspiratorial objective, and their acts furthered the conspiratorial objective explicitly and implicitly.”

The objective, according to the Complaint, was for the Defendants to enrich themselves at the expense of Same Day and other providers by luring them into providing services “through representations, course of conduct, dealings and/or usage of trade”, but then providing only “arbitrary and nominal reimbursement far below UCR rates.” The Defendants knew, so the Complaint avers, that many of Same Day's claims for reimbursement would not be paid at the rates represented at pre-authorization or according to industry custom and “Defendants' representations regarding the manner in which plaintiff's claims would be/were adjudicated and/or paid were designed to mislead, induce and deceive [Same Day].”

\*6 The Complaint alleges that the United and the Payor Defendants falsely represent to the public that ““Viant maintains an extensive database”” to determine UCR in northern New Jersey, when in fact Viant “pays” in an arbitrary manner that, for many of its negotiators, is “merely a percentage of Medicare rates.” Viant receives commissions that correlate to the extent of

underpayment. The United Defendants knew and/or should have known that Viant did not “maintain an adequate database” or employ other practices or policies to determine reasonable payment amounts.

The Second Count - stated to be lodged against the United and Payor Defendants only - alleges that the “Defendants” indicated “by a course of conduct, dealings and the circumstances surrounding the relationship, and/or by trade usage, to [Same Day] that defendants would pay for surgical and medical expenses provided.” The “defendants”, according to the Complaint, “were paid premiums by the Patients for out-of-network coverage, and the services of [Same Day] were necessary to satisfy the surgical and medical needs of defendants' insureds.”

The Complaint alleges that the “Defendants” indicated “by course of conduct, dealings and the circumstances surrounding the relationship, and/or trade usage to [Same Day] that defendants would hold their insurance harmless after a Patient reached his/her maximum annual patient responsibility, and thus timely pay plaintiff its billed charges or UCR amounts.” The “Defendants” indicated “by a course of conduct, dealings, and the circumstances surrounding their relationship, and/or trade usage to [Same Day] that they would honor” their representations that the services were pre-authorized, their representations as to payment verification and/or their representations that pre-authorization was not required.

Same Day contends it rendered medically necessary services to the patients identified on the DCL and expected “defendants” to “properly compensate [Same Day].” It avers that “[d] indicating to [Same Day] by a course of conduct, dealings and the circumstances surrounding the relationship, and/or trade usage that defendants would properly and timely reimburse plaintiff for either its actual charges as an out-of-network provider or its UCR rates”, the “defendants” failed to do so, thereby breaching an implied contract “between defendants and [Same Day].”

The Third Count - also said to be lodged against the United and Payor Defendants only - avers that the contract “between defendants and [Same Day]” contains an implied covenant of good faith and fair dealing. It asserts that the “Defendants” acted with “improper motive” and impaired the Plaintiff’s “rights and benefits under the contract”, and “breached the contract through acts of commission or omission described herein that are wrongful and without justification.”

The Fourth Count - explicitly lodged as to all Defendants - alleges that the “Defendants have enriched themselves unjustly and at the expense of [Same Day].” It asserts that the “Defendants were paid higher premiums by the Patients for access to out-of-network [sic].” It avers that, “[t]o satisfy their legal obligations, the defendants required the services of [Same Day] to render services to the Patients.”

This Count asserts that “[t]he United Defendants and Viant colluded to understate the UCR rate for out-of-network providers” and the amounts not paid to Same Day were unjustly retained by the Defendants, including for ““commissions”” or kickbacks to the United Defendants and Viant “for so-called ‘savings.’” The Defendants, according to the Complaint, received a benefit in the form of payments redirected to them from Same Day and through the rendering by the Plaintiff of services for which the Plaintiff has been grossly underpaid. The Defendants, the Complaint avers, have been enriched as well through use of funds that should have been paid “in a timely and appropriate manner” to the Plaintiff.

\*7 The Plaintiff directs the Fifth Count only against the United and Payor Defendants. This Count alleges that the “Defendants made promises to [Same Day] that proper coverage for medical services would be afforded to certain Patients identified on the DCL, including by pre-authorizing and/or pre-certifying services, and/or advising the pre-authorization was not necessary, and/or verifying payment terms, and/or paying for initial care, and then in each instance refusing proper payment when the bills were submitted by [Same Day].” This Count avers that the “defendants were contacted to confirm whether there was health insurance coverage for the services to be rendered by plaintiff and/or to verify payment terms” and “Defendants confirmed that the services were covered by the Patient's health insurance plan and/or verified the amount of payment to be made for the services.”

Same day alleges that the “Defendants expected, or reasonably should have expected, that the pre-authorizations and payment verifications would be relied upon by [Same Day] in agreeing to render services.” Same Day asserts that the United Defendants



“did not advise or disclose to [Same Day] that after it rendered the pre-approved services, all or most surgical facility claims would be unilaterally redirected to a third-party, Viant, for repricing.”

The Fifth Count asserts that Same Day reasonably relied on the authorizations and verifications as inducements to render services. It did so to its detriment as Viant “unilaterally imposed an extremely low rate of payment, bearing no relationship to the verified payment terms, and does so [sic] after plaintiff had been induced to render services, including by defendants' statements and conduct relating to pre-authorization.”

The Sixth Count - explicitly advanced against all Defendants - avers that the “Defendants negligently represented that they would provide proper coverage to the Patients identified on the DCL, and thus pay the claims correctly, including by way of pre-authorization and/or pre-certification of services, and/or advising that pre-authorization was not necessary, and/or payment verification and/or paying for initial care, and then in each instance refusing proper payment when the bills were submitted by [Same Day].” This Count alleges that these representations were false in that “[d]efendants materially misrepresented to [Same Day] that defendants’ plans entitled the Patients to receive the appropriated level of coverage for the medical services provided.” Same Day avers that “after the services were rendered - and contrary to the pre-authorizations, pre-certifications and/or payment verifications provided by defendants - defendants improperly underpaid for the for services rendered.”

This Count alleges that Same Day relied on such representations and the course of conduct between the parties to its detriment. It avers that Viant “unilaterally imposed” an “extremely low rate of repayment, bearing no relationship to verified payment terms” after the plaintiff was induced to render services “by defendants' negligent statements and conduct relating to pre-authorization.”

The Seventh Count - also directed to all Defendants - avers that the “Defendants” intentionally misrepresented that Same Day would be paid a UCR rate for its services to the patients identified on the DCL; that the initial payment amount was a “negotiated, mutually agreed” amount; that Viant's repricing was based on a “valid, objective determination of UCR for surgical facilities in northern New Jersey”, while not disclosing that it was a low ball offer as part of a “covet negotiation” [sic] process. This Count also asserts that the Defendants intentionally misstated “patient responsibility where Patients had reached their maximum annual amount.”

This Count asserts that Viant “intentionally colluded with the United Defendants (and thus the Payor Defendants)”, who sanctioned these repricing practices. It contends that Viant and the United Defendants received compensation from the Payor Defendants as a result of the “defendants' intentional misrepresentations.”

\*8 The Seventh Count asserts that Same Day reasonably believed it would be paid for its services on the basis of UCR rates. It alleges that it thus justifiably relied on “what turned out to be defendant s' intentional misrepresentations.”

The Eighth Count - advanced against the United Defendants and Viant - asserts that the “Defendants owed a duty of care to [Same Day].” It alleges that the Defendants breached this duty by failing to disclose to Same Day that its reimbursement claims would be “diverted to a repricer”; by failing to disclose that Viant's repricing was not based on any “objective measure of UCR”; and/or by not “overseeing, auditing or otherwise insuring that Viant's practices were reasonable and accurate.”

The Ninth Count - asserted against all Defendants - alleges that Same Day had a reasonable expectation of economic advantage or benefit. It asserts that the Defendants were aware of Same Day's expectancy of advantage and wrongfully interfered with it. Same Day avers that, but for such wrongful interference, it would have realized its expected economic benefit.

The Tenth Count - alleged against the United Defendants and Viant - asserts that the “Defendants have undertaken acts of control in in denial of [Same Day's] rights to UCR payment, or undertaken acts inconsistent with [Same Day's] rights.” It alleges that, having performed services based on a pre-authorization and upon timely submission of a claim, Same Day had a right to “issuance and possession of a UCR payment” and the “Defendants” wrongfully interfered with such right by “diverting [Same

Day's] claims to a flawed repricing scheme, resulting in gross underpayment, and to that end, redirecting amounts that should have been paid to providers, including [Same Day] to themselves as a 'commission' or 'savings.'”

The Eleventh Count - lodged against the United Defendants and Payor Defendants - asserts that under New Jersey's Prompt Pay laws, namely the Healthcare Information Networks and Technologies Act, N.J.S.A. 17B:30-23; 17:48-8.4; 17:48A-7.12; 17:48E-10.1; 17B:26-9.1; 17B:27-44.2 and 26:2J-8.1, and the regulations promulgated at N.J.A.C. 11:22-1, *et seq.*, the “defendants” were required to remit payment to Same Day no later than 30 or 40 days following receipt of Same Day's claim or to notify Same Day within seven days of specific reasons for denial or dispute, and to expeditiously request any missing information required to process the claims. This Count alleges that the Plaintiff has an implied private right of action to assert a claim under the cited statutes and the Health Claims Authorization, Processing and Payment Act. It contends the overdue payments owed to it bear simple interest at a rate of 12% per annum.

This Count asserts that the “defendants as a matter of practice and/or policy” delayed payment of properly-submitted claims, did not pay them correctly and did not pay the required interest. According to the Complaint, the “defendants” earned and continue to earn profits from their use of the funds they failed to pay to the Plaintiff within the prescribed time period. Such practices violated the prompt pay laws, so the Plaintiff contends, resulting in compensable damage to Same Day.

### III

On these motions, all Defendants - Viant via joinder - contend that the Complaint is legally deficient because the Plaintiff has impermissibly alleged conduct, actions, omissions and/or representations by all named Defendants without specifying which of the Defendants actually engaged in the alleged conduct, acts, omissions or representations. The movants assert such pleading practice renders the Complaint legally deficient. They contend that conclusory allegations that the United Defendants and Viant were agents of the Payor Defendants, and/or in the case of Viant, that it was also an agent of the United Defendants, do not cure the deficiency.

\*9 The movants point out that the DCL refers to first names only of the individuals who allegedly pre-authorized the services of the Plaintiff, advised that no pre-authorization was required and/or verified payment amounts as a percentage of UCR rates. According to the movants, the Plaintiff has failed to identify such individuals by last name or affiliation with one or more of the Defendants or even to identify the entity or entities the Plaintiff believed it was communicating with. The movants assert that this lack of specification as to who provided the alleged assurances and/or on whose behalf the same were provided undermines the pleading as a basis for proceeding the various causes of action.

The movants specifically challenge the legal validity of the First and Eleventh Counts. They contend that, due to the impermissible grouping of the named parties under the heading “Defendants” without differentiating among them or identifying which parties undertook which actions, the Complaint fails to state a claim for civil conspiracy.

They further assert that there is no express or implied right of action under the New Jersey “Prompt Pay” laws or regulations. They argue that a recent ruling in the United States District Court confirms the lack of an implied right of action, as such Court pointed out that an amendment to the Prompt Pay laws prescribing a mandatory arbitration remedy confirms the absence of a private civil right of action.

Viant further contends that the Plaintiff's claim for civil conspiracy fails as the Complaint does not sufficiently allege that Viant knew of a plan to deprive Same Day of its proper payment or that Viant performed any action(s) in furtherance of such plan. Viant asserts the allegations of the Plaintiff as to the existence of a conspiracy are impermissibly conclusory and that the Court is not required to accept as true such conclusory allegations.

Viant asserts that the claim alleging unjust enrichment/quantum meruit as to Viant is untenable as a matter of law. It contends that the Plaintiff has not alleged with any meaningful specificity that the Plaintiff conferred any benefit on Viant, the retention

of which would be unjust. It argues that the only beneficiaries of the Plaintiff's medical services were the patients, and, in all events, that Viant did not receive any benefit from the same.

This movant argues that the claims sounding in fraud and/or negligent misrepresentation are unsustainable as the Complaint fails to plead these causes of action with requisite particularity. It asserts that the Complaint does not set forth what false representations Viant made and/or the "who, when and where" facts required to state a viable claim for fraud or misrepresentation.

Viant asserts the Plaintiff has not satisfied the obligation to plead reasonable reliance on any conduct of Viant, including reliance on Viant's alleged misconduct in holding itself out as an entity that objectively determines the UCR for a medical provider's services.

This Defendant challenges the legal sufficiency of the claim for conversion. It argues that Same Day is simply alleging an unpaid debt and not the improper exercise of dominion over property in derogation of the Plaintiff's right to the same.

Viant contends the claim asserting tortious interference fails as the Plaintiff has not alleged facts establishing the element of malice. It asserts that the Complaint merely alleges that Viant and the other Defendants pursued its or their own economic self-interests, which is not unlawful. Finally, this movant contends the Plaintiff's claim for negligence is not legally viable as the pleading does not establish a duty of care owed by Viant to Same Day.

#### IV

**\*10** This Court concludes that, insofar as the Complaint refers to the Payor and United Defendants, it does not indiscriminately or otherwise inappropriately lump together such parties in a manner that prevents them from understanding the conduct they allegedly engaged in or the basis of the claims asserted against them. To the contrary, the Complaint alleges these Defendants either sponsored, controlled, administered or underwrote the various plans of which the subject patients were members or beneficiaries.

The Complaint asserts that the United Defendants, in their capacities as plan administrators, were agents of the Payor Defendants. It alleges that the Payor Defendants or the United Defendants, acting as agents or as principals, pre-authorized the medical services the Plaintiff performed on an out-of-network basis in relation to the specific patients on the DCL list or advised that pre-certification was not necessary. It avers that in each case (save for four instances) that these entities represented to the Plaintiff that the services would be compensated at a specified percentage of the UCR rates.

The Complaint alleges that the assurances of payment given in respect of the patients named on the DCL (and other patients) established a course of dealing or practice that created an implied contract for payment for medical services based upon specified percentages of the UCR. The Complaint avers that the Defendants then breached the contract(s) in the cases of the patients identified on the DCL by grossly underpaying the Plaintiff, employing Viant as a means to justify the underpayments through a contrived determination of the UCR.

The Complaint asserts that that the Payor and United Defendants acted in concert, along with Viant, to grossly underpay the Plaintiff for the services. According to the Complaint, the Payor and United Defendants accomplished this result by first giving false assurances of payment based on the UCR rates and then engaging Viant to perform repricing of the claims. The Complaint alleges that Viant, acting for the United Defendants, purported to engage in good faith negotiations of the UCR for various services provided by Same Day, based on an objective determination of UCR grounded in a proprietary database, but in fact arbitrarily employed benchmark reimbursement amounts established by corporate policies of the Payor and United Defendants. Through this process, according to the Complaint, the conspiring Defendants bullied providers into accepting the underpayments. The Complaint alleges that the Payor Defendants then kicked back amounts to the United Defendants and Viant based on levels of underpayment achieved.

The pleading at issue here differs materially from that involved in [Four Seasons at North Caldwell Condominium Association, Inc v. K. Hovnanian at North Caldwell III, LLC](#), 2019 WL 2996574 (N.J. Super. Law Div.) a non-precedential decision (of this Court) on which the Defendants rely for their principal contention as to the pleading - namely, that it impermissibly groups the Defendants together and fails to differentiate among them and thus fails to sufficiently allege facts as to who did what and when. [Four Seasons](#) is a construction defect case in which the plaintiff condominium association sued a developer and numerous affiliates within a large corporate organization. The Plaintiff alleged that the developer and all members of the corporate family were individually liable for breach of contract, fraud, consumer fraud and negligence, among other claims, even though it was readily apparent that only the developer entered the contracts (for the most part), issued the disclosure statement to unit purchasers, and undertook the actual project development work. Indeed, the complaint at issue in [Four Seasons](#) explicitly alleged that the affiliates of the developer entity were vicariously liable for the obligations of the developer on the theory of piercing the corporate veil.

\*11 It was in this context that the Court found the pleading legally deficient. The Court determined in the circumstances that it was impermissible for the plaintiff to allege that all of the affiliates had engaged in breach of contract, misrepresentation or other tortious conduct without specifically delineating how entities other than the developer itself could also have done so. Absent more specific allegations, the Court found in the particular circumstances that a pleading alleging that all such defendants entered into and breached contracts, misrepresented the quality of the construction or failed to ensure proper construction of the project was insufficient.

In this case, the pleading does allege the role played by the Payor Defendants and the United Defendants in effectuating the claimed underpayments with sufficient specificity to apprise them of the basis of the claims asserted. In contrast to the matters addressed in [Four Seasons](#), the Payor Defendants and the United Defendants are similarly-situated in relation to the allegations of this Complaint.

The Court is aware that the Complaint alleges that Same Day obtained pre-authorizations or assurances that the same were not required and the payment verifications from only partially-named individuals who are only partially-named, and without pleading a specific affiliation to a Payor and/or United Defendant. But it is readily apparent that the Plaintiff alleges these individuals were acting directly or on behalf of one of the Payor Defendants and/or the United Defendants and in the latter case, as either a principal (i.e., an insurer) of the plan or as an agent of the plan sponsor.

The Court concludes the pleading adequately identifies the factual predicate for the claims stated, once again sufficiently informing the United and Payor Defendants of the actions allegedly undertaken by them that form the essential underpinning of the various legal theories pleaded by the Plaintiff. The Plaintiff is entitled in the circumstances to develop a more complete identification of the individuals and their affiliations via discovery.

Same Day has pleaded sufficient facts to establish a viable claim for civil conspiracy as against the Payor and United Defendants. As the parties agree, an actionable civil conspiracy arises from an agreement to perform an unlawful act or a lawful act by unlawful means. [Banco Popular N. Am. v. Gandi](#), 184 N.J. 161, 177 (2005). It is not an independent cause of action, but a means by which to hold multiple parties accountable in damages for participating jointly in an underlying tort. The participants must be aware of and share in the essential objectives of the alleged conspiracy and undertake some act to advance the same. “It is enough [for liability] if you understand the general objectives of scheme, accept them, and agree, either explicitly or implicitly, to do your part to further them.” *Ibid.* (internal quotation marks omitted).

Here, the Complaint alleges the Defendants knew of the authorizations and assurances of payment given to Same Day for the medical services and participated in a scheme to underpay the Plaintiff via the re-pricing activities of Viant. The Complaint alleges that the Payor and United Defendants adopted Viant's determinations of UCR, knowing the same were not the product of objective analysis as represented, but of arbitrary assignments of UCR amounts in order to keep the payments under a

predetermined benchmark. The Complaint avers that the Payor Defendants compensated the United Defendants and Viant through kickbacks, in the form of increasing portions of the savings achieved.

The Complaint alleges the ultimate purpose of the concerted action among the Defendants was to undermine the ability of out-of-network providers to provide services to plan beneficiaries and force the latter to refrain from using such providers. It asserts this practice is at odds with the fact that the Payor Defendants charged and accepted additional premiums for affording the beneficiaries the right to engage out-of-network providers in certain circumstances.

**\*12** The Complaint adequately alleges that the participants in the conspiracy were aware of this objective of the undertaking and subscribed to the same. It sets forth a specific division of labor among the Payor Defendants, the United Defendants and Viant, as well as the respective roles performed and the overt acts undertaken by each of them in connection with the concerted effort to reduce the payments to Same Day.

Whether the Plaintiff can or will prove these allegations is, of course, not a matter that the Court can or must determine at this juncture. But examination of the Complaint, particularly under the liberal standard of Printing Mart, belies the contention that the pleading does not sufficiently allege a civil conspiracy because it impermissibly lumps together the Defendants without identifying the conduct undertaken by each of them to support the claims asserted against them. Insofar as the claim of a civil conspiracy is concerned, this assertion overlooks the various allegations that establish the requisites for a claim sounding in civil conspiracy - the claimed orchestration of the same by the Payor and United Defendants, the assurances of payment allegedly given to Same Day by representatives of the Payor and United Defendants with an intention not to honor the same, and the use of the re-pricing process performed by Viant as a means of effecting a gross underpayment under the guise of a proper determination of the UCR.

At the same time, however, the Court arrives at a different conclusion as to several of the other claims asserted against Viant. It is true that the Complaint contains many averments against the “Defendants” collectively when it is readily apparent, based on the role the alleged role of Viant in the matters that issue, that the latter did not and could not have undertaken or participated in the conduct. In this respect, the Complaint does impermissibly conflate various Defendants in a manner akin to the pleading deficiencies identified in Four Seasons.

For example, although the Second and Third Counts of the Amended Complaint state in the heading that the Count assert claims against the Payor and United Defendants only, the specific allegations of these Counts tell a different story. Paragraph 76 alleges the Defendants - defined elsewhere in the Complaint to include Viant - “indicated by a course of conduct and/or by trade usage to [Same Day] that defendants would pay for surgical and medical services provided.” Paragraph 77 alleges that the Defendants “represent that their members and beneficiaries are covered for out-of-network pre-authorized care.” Paragraph 78 avers that the “defendants” were “paid premiums by patients for out-of-network coverage.” Both the Second and Third Counts assert a right to relief for breach of contract against all Defendants.

Such allegations and claims are fundamentally at odds with the factual averments concerning the role of Viant in relation to the matters at issue. According to the Complaint, Viant did not represent to Same Day at the time services were provided that Same Day would be paid for the same. Viant did not represent at such time that the patients were covered by the applicable plan. Nor did Viant receive premiums for such coverage. Indeed, Viant was not involved in the relationship among the parties until after the services were provided and the alleged implied contract was already formed. Presumably, this explains why the Plaintiff states in the headings of the Second and Third Counts that only the Payor and United Defendants are the targets of such Counts, even if the same can otherwise be read to state otherwise.

**\*13** The Court accepts that the Complaint does not actually lodge a claim for breach of contract against Viant. But the lack of differentiation among the Payor and United Defendants, on the one hand, and Viant, on the other hand, does appear to the Court to result in certain claims being asserted against Viant that are not tenable, at least on the facts currently alleged.

The claim for unjust enrichment and/or quantum meruit hinges on allegations that the Plaintiff conferred a benefit on the Defendants and/or performed a service for them for which the Plaintiff reasonably expected remuneration. The Court finds the benefit conferred was the satisfaction or discharge of the obligations of the respective plan sponsors or insurers to cover the patient participants for out-of-network services. See, e.g., [Plastic Surgery Center, PA. v. Aetna Life Insurance Co.](#), 967 F.3d 218, 241 n.27 (3d Cir.2020); [El Paso Healthcare Sys. v. Molina Healthcare of N. M., Inc.](#), 683 F. Supp. 2d 454, 461 (W.D. Tex. 2016).

Given the allegations of the Complaint, even when examined liberally in Same Day's favor, it is not possible to conclude that Same Day conferred a benefit on Viant or that Viant, via its role in the matters alleged, received a benefit from Same Day. Viant had no contractual obligation to afford the subject patients out-of-network or any other services. Instead, the Complaint alleges, that only after the promise to pay was given by or on behalf of the Payor and or United Defendants, Viant entered the picture to undertake the allegedly fraudulent re-pricing, thereby assisting the latter in the underpayment scheme.

Likewise, the Plaintiff did not perform services for Viant or take any other action for which it expected remuneration from Viant - the requisites for a claim predicated on quantum meruit. Indeed, according to the Complaint, the Plaintiff had no interaction with Viant, prior to performing the services to the patients. In the circumstances, there could not have been an expectation of remuneration from Viant for such services.

The Plaintiff contends that the claim for unjust enrichment does not require a showing of benefit conferred by the Plaintiff on the specific defendant. The Court does not agree. Although the benefit conferred by the Plaintiff may be the performance of a service, the theory does require a benefit to be conferred. In [VRG v. GKN Realty](#), 135 N.J. 539, 554 (1994), the court made clear that the plaintiff must expect remuneration from a benefit conferred, which could include a service inuring to the defendant's benefit.

Moreover, this is not, contrary to the argument of the Plaintiff, a circumstance in which a party that received a benefit from the plaintiff mistakenly paid a third-party for the same, thereby unjustly enriching the third-party. The cases applying the theory of unjust enrichment in such circumstances are simply not apposite here.

Insofar as the claim against Vian is concerned, the Plaintiff is attempting to fit a square peg of the facts and circumstances alleged as to Viant into the round hole of quasi-contract. The circumstances currently pleaded here do not allege a relationship as between Same Day and Viant that gives rise to a viable claim that sounds in actual or quasi-contract. Put differently, the performance of services by Same Day for members of the Payor or United Defendants' plans may have benefited such defendants by enabling them to satisfy an obligation owed by them, but such services did not similarly benefit Viant or cause Same Day to reasonably expect remuneration from Viant.

**\*14** The claims for fraud and/or negligent misrepresentation asserted in the Sixth and Seventh Counts as against Viant are similarly unsustainable. Both causes of action require allegations of a misrepresentation of fact or omission of material information, together with reliance. To establish common-law fraud, a plaintiff must prove: (1) a material misrepresentation of a presently existing or past fact; (2) knowledge or belief by the defendant of its falsity; (3) an intention that the other person rely on it; (4) reasonable reliance thereon by the other person; and (5) resulting damages. [Gennari v. Weichert Co. Realtors](#), 148 N.J. 582, 610 (1997).

The essential misrepresentations on which the Plaintiff's claim is predicated here were the pre-authorization/assurances that such pre-authorizations were not required and the assurances of payment according to the UCR given to the Plaintiff prior to performing the medical services for each patient listed on the DCL. On the basis of the facts presently alleged, Viant did not participate in such assurances. Its alleged role in the claimed underpayments did not even occur until after the assurances of payment had already been given.

One can read the Complaint to assert that Viant misrepresented its function by falsely stating that its re-pricing services were based on an objective assessment of the UCR rates for the various components of services provided by Same Day. But even presuming that Viant offered such representations to Same Day - as opposed to the Payor and United Defendants - the facts alleged in the Complaint establish that any such misstatements followed the performance of services by the Plaintiff. The Plaintiff cannot have relied on the same in undertaking to perform the services for the patients.

The Court finds the claim for conversion lodged in the Tenth Count is also unsustainable as to Viant. Conversion is the unlawful exercise of dominion over the property of another without a claim of right. [Advanced Enters. Recycling, Inc. v. Bercaw](#), 376 N.J. Super. 153, 161 (App. Div. 2005) (“An action for conversion will not lie in the context of a mere debt or chose in action, however. Where there is no obligation to return the identical money, but only a relationship of a debtor and creditor, an action for conversion of the funds representing the indebtedness will not lie against the debtor”). Even presuming that the relationship between Same Day and the Payor and United Defendants permits a conclusion that the withholding of payment by the latter constituted a conversion of funds in which the Plaintiff had a property right, the same is not true as to Viant.

The Complaint avers that Same Day had a property right in specific funds retained by the Payor and/or United Defendants because the latter owed the same to the former due to the nature of the parties' relationship. Viant had no such relationship with Same Day when the alleged right to payment arose and did not itself owe Same Day anything on account of medical services. This is so even granting as true the averment that Viant subsequently received from the Payor and United Defendants a portion of the savings accomplished by the alleged scheme. Viant's relationship to Same Day is simply too attenuated to permit the conclusion that it converted Same Day's funds through an underpayment of amounts owed to it by the Payor and United Defendants.

The Court finds that the Plaintiff has alleged sufficient facts to state viable claims against Viant for negligence and tortious interference with prospective economic advantage, alleged in the Eighth and Ninth Counts, respectively. As to negligence, the Complaint asserts facts that, if proved, could support a conclusion that Viant assumed a duty of reasonable care as to Same Day. By undertaking, allegedly under false pretenses, to re-price the reimbursement claims of Same Day and support the payment determinations of the Payor and United Defendants, one could conclude in the circumstances that Viant assumed a duty to perform such re-pricing based on an accurate, objective determination of UCR, but failed actually to do so.

**\*15** A claim for tortious interference with prospective economic advantage arises when the plaintiff has a reasonable prospect of economic advantage with which the defendant knowingly and maliciously interfered. [Printing Mart](#), 116 N.J. at 750. Here, the Complaint alleges that Viant joined a scheme to deprive Same Day of the full economic benefit of its medical services rendered to the patients by fraudulently re-pricing the reimbursement claims of Same Day for the benefit of both the Payor and United Defendants and Viant. Put differently, according to the Complaint, the Plaintiff alleges that Viant knowingly and wrongfully supplied the specific means and method by which the Payor and United Defendants achieved and legitimized substantial underpayments. Such averments establish conduct undertaken not merely in the exercise of economic self-interest by Viant, but an intentional interference with expected economic benefits without justification.

Finally, the court finds the Eleventh Count states a viable claim as against the Payor and United Defendants (only) for failure to comply with the New Jersey Prompt Pay laws and regulations. The Court concludes there is a sufficient basis for finding an implied private right of action under such provisions to warrant permitting the same to stand at this stage of the proceedings.

Although the Court is mindful that the Prompt Pay laws do not provide an express private right of action, an implied private right of action exists when the party claiming the same is a party for whose especial benefit the statutory or regulatory scheme exists, the Legislature expressly or impliedly intended to establish a right of action for certain private parties and the purposes or objectives of the statutory or regulatory scheme would be advanced by recognizing a private right of action. [See, e.g., In Re Resolution of State Commission of Investigation](#), 108 N.J. 35, 41 (1987). In this case, the statute and regulations adopted to implement the Prompt Pay laws provide explicitly that a failure to timely pay a provider is a violation of the law, resulting

in an obligation to pay the provider interest at a rate of 12% as to an unpaid balance. In the circumstances, it is reasonable to find that the Plaintiff is an intended beneficiary of the regulatory scheme and that the Legislature and regulatory authorities intended providers to recover interest at the prescribed rate when not paid for services in a timely manner. Likewise, permitting a provider to recover interest upon a showing of a violation in respect of such provider services advances the central objective of the law of ensuring timely payment of legitimate claims. As failures to make such timely payments are the essential grounds for the Plaintiff's claims here, the Court finds, at least at this early juncture, that the Complaint states a viable claim for relief.

The Court is mindful of the decision of the United States District Court in [MHA, LLC v. AmeriGroup Corp.](#), 593 F. Supp. 3d 349 (D.N.J. 2021), its critique of a prior decision of this Court and its reasoning as to a prior unreported decision of this Court in [Sutter v. Horizon BlueCross/Blue Shield of New Jersey](#), No. L-3685-02, 2003 WL 27381731 (Law Div. Feb. 13, 2003), and a decision of the Appellate Division in [Medical Society of New Jersey v. AmeriHealth HMO, Inc.](#), 376 N.J. Super. 48 (App. Div. 2005). In the latter case, the court suggested that an implied private right of action for damages for individual providers might exist, but that it was not necessary to determine the issue in the context of a case brought by a medical society and seeking injunctive relief. This Court is also aware, as [MHA](#) points out, that the question of the existence *vel non* of an implied private right of action in relation to a statutory/regulatory scheme is a legal issue for the Court.

In its prior decisions on this issue and herein, the Court has determined only that there is a sufficient basis in the text and apparent purpose of the relevant statutes and regulations to conclude that an implied private right of action may exist in relation to the facts alleged to permit the pleading to stand and to warrant a more complete exploration of the issue at a later time. In this and prior cases, the Court was presented with an omnibus motion to dismiss in which the movants sought dismissal of all or large portions of a complaint on a variety of grounds. The briefing as to the issues of whether or not a private right of action exists under the emergency services and Prompt Pay statutes and regulations was limited, as was the record as to applicable legislative and regulatory history. This Court believes in all the circumstances that the subject matter requires an opportunity for more comprehensive examination by the parties before undertaking to issue a definitive ruling.

**\*16** For these reasons, the Court grants the motion of Viant and dismisses the claims as to Viant in the Fourth, Sixth and Seventh Counts without prejudice to the right to re-plead if desired as to any or all such Counts to address the deficiencies noted herein. The Court otherwise denies the Defendants' motions.