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Health Management Associates, LLC and  
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CAREPOINT HEALTH MANAGEMENT  
ASSOCIATES, LLC and MCCABE  
AMBULANCE SERVICES, INC.,

Plaintiffs,

v.

JERSEY CITY MEDICAL CENTER,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: HUDSON COUNTY

DOCKET NO.: \_\_\_\_\_

CIVIL ACTION

COMPLAINT

Plaintiffs CarePoint Health Management Associates, LLC (“CarePoint”) and McCabe Ambulance Services, Inc. (“McCabe,” and collectively with CarePoint, the “Plaintiffs”), by and through their undersigned attorneys, K&L Gates, LLP, as and for their Complaint against Defendant Jersey City Medical Center (“JCMC” or “Defendant”), respectfully state and alleges as follows:

**PARTIES**

1. Plaintiff CarePoint is a limited liability company organized under the laws of the state of New Jersey having a principal place of business located at 10 Exchange Place, 15th Floor, Jersey City, New Jersey 07302.

2. Plaintiff McCabe is a corporation organized under the laws of the state of New Jersey having a principal place of business located at 7 East 41st Street, Bayonne, New Jersey 07002.

3. Defendant JCMC is a corporation organized under the laws of the state of New Jersey having a principal place of business located at 355 Grand Street, Jersey City, New Jersey 07302. JCMC is the sole provider of basic and advanced lifesaving ambulance services in Jersey City, New Jersey.

### **JURISDICTION AND VENUE**

4. Jurisdiction of this action is proper in this Court, as the actions giving rise to the claims and causes of action set forth herein took place in Hudson County.

5. Venue is proper in this Court pursuant to R. 4:3-2(a)(3).

### **FACTUAL BACKGROUND**

6. CarePoint is a healthcare organization that owns and operates three (3) hospital centers located in Hudson County, New Jersey: (i) Bayonne Medical Center (“Bayonne”); (ii) Christ Hospital in Jersey City (“Christ”); and (iii) Hoboken University Medical Center (“HUMC”).

7. McCabe, an affiliate of CarePoint, provides complete basic life support emergency ambulance services to large, densely populated, urban New Jersey communities such as Jersey City.

8. JCMC is a hospital facility located in Jersey City, and is currently owned and operated by RWJBarnabas Health.

#### **I. The BLS Contract**

9. In September 2013, the City of Jersey City, New Jersey (“CJC”) issued a request for bid proposals (the “Initial RFP”), wherein CJC sought proposals for a contract (the “BLS”

Contract”) to provide for Basic Life Support Emergency Ambulance Services (the “BLS Services”) to residents of Jersey City.

10. An evaluation committee appointed by CJC (the “Evaluation Committee”) evaluated the Initial RFP, which scored and ranked all bid proposals based on the extent to which each met or exceeded the evaluation methodology set forth in the Initial RFP.

11. On or about November 13, 2013, both McCabe and JCMC submitted bids in response to the Initial RFP, and the Evaluation Committee evaluated such bids according to the required methodology.

12. Though the Evaluation Committee recommended in an Initial Evaluation Report that CJC award McCabe the BLS Contract, and CJC prepared a subsequent resolution to effectuate such recommendation, CJC removed a vote to award the BLS Contract from the agenda of a December 18, 2013 public hearing.

13. Upon information and belief, an objection by JCMC to the provisions of the Initial RFP caused CJC to remove the vote to award the BLS Contract from the public hearing’s agenda. Subsequently, McCabe submitted its proposal under the Initial RFP to CJC’s Office of Inspector General (the “OIG”).

14. On or about June 25, 2014, while the OIG was still evaluating McCabe’s proposal, CJC passed a resolution rejecting all proposals submitted pursuant to the Initial RFP and authorized the issuance of a new Request for Proposals.

15. On June 26, 2014, CJC issued a second Request for Proposals (the “Second RFP”) for BLS Services, and McCabe and JCMC again submitted proposals in accordance therewith. After the Evaluation Committee evaluated the bids submitted in accordance with the Second RFP, CJC awarded JCMC the BLS Contract on November 12, 2014.

## II. The McCabe Action and Settlement Agreement

16. On December 8, 2014, McCabe commenced an action in this Court against the CJC and JCMC captioned *McCabe Ambulance Service, Inc. v. City of Jersey City, et al.*; Case No. HUD-L5182-14 (the “McCabe Action”).

17. In the McCabe Action, McCabe asserted, among other things, that: (i) CJC improperly rejected the proposals submitted pursuant to the Initial RFP; (ii) the Evaluation Committee did not evaluate the proposals submitted pursuant to the Second RFP according to the six (6) required evaluation criteria set forth therein; (iii) the Evaluation Committee improperly considered evaluation criteria not set forth in the Second RFP; and (iv) CJC improperly awarded the BLS Contract to JCMC.

18. Additionally, in the McCabe Action, McCabe requested judgment from this Court: (i) nullifying the award of the BLS Contract to JCMC; (ii) nullifying the resolution of CJC’s municipal council awarding the BLS Contract to JCMC; (iii) requiring CJC to rescind the award of the BLS Contract to JCMC; and (iv) requiring CJC to re-bid the BLS Contract in accordance with the New Jersey Local Public Contract Law.

19. On July 1, 2016, CarePoint, McCabe, JCMC, and CJC (collectively, the “Settlement Parties”) entered into a Settlement Agreement resolving the claims asserted in the McCabe Action.

20. Under the Settlement Agreement, JCMC agreed, among other things, to provide ambulance transports for BLS Services, as well as Advanced Life Saving Services to Jersey City, pursuant to a grid-based protocol (the “Grid Protocol”). The purpose of the Grid Protocol was to identify the closest appropriate facility for all Emergency Medical Services (“EMS”) patient transports originating within Jersey City.

21. Specifically, the Grid Protocol separates Jersey City into six (6) separate geographic zones, based on the closest medical facility to each particular zone: (i) the City of Jersey City; (ii) the Christ Zone; (iii) the JCMC Zone; (iv) the Bayonne Zone; (v) the North Borderline Zone; and (vi) the South Borderline Zone. *See* Ex. B at Ex. A.

22. Under the Settlement Agreement, JCMC must transport patient pick-ups originating from a designated grid zone to the medical facility identified by the Grid Protocol for the specific geographic zone. Additionally, when an EMS patient transport originates in the North Borderline or South Borderline Zones of the Grid Protocol, where the distance to JCMC and Christ are approximately equal, JCMC must transport such patients to JCMC and a CarePoint facility equally (*i.e.*, if in a given month there are 100 EMS patient transports originating in the North Borderline Zone, JCMC must, as practically as possible, to deliver 50 such patients to CarePoint facilities and 50 to JCMC under the terms of the Settlement Agreement).

23. The Settlement Agreement prohibits JCMC's EMS personnel from taking any action or making any statements designed to influence or persuade a patient's choice when asking the patient whether it prefers to go to a particular facility.

24. In addition to its life-saving implications, an ambulance transport company's decision as to where to transport a patient has significant financial implications for the receiving medical facility. Among other things, federal and state law require the receiving medical facility to treat and stabilize any patient coming into the facility's emergency department, regardless of the patient's insurance status or ability to pay. At the same time, depending on the patient's insurance coverage, the medical facility to which the patient is delivered can reasonably expect to earn significant revenue in the form of insurance reimbursements for the life-saving and life-sustaining services and supplies the facility renders to the patients, both in the facility's emergency

department and through any subsequent emergency or in-patient treatment provided to patients thereafter.

25. Thus, if an ambulance service improperly steers patients to specific medical facilities based on the patients' ability to pay and/or insurance coverage, such conduct can cause significant financial harm to the medical facility that receives a disproportionately high share of patients without private insurance coverage or who are otherwise unable to pay, while depriving that facility of the revenues it can reasonably expect from patients covered by private health insurance.

26. The parties designed the Settlement Agreement and accompanying Grid Protocol to prevent such improper redirecting, diverting or steering and ensure equitable distribution of EMS patient transports. Furthermore, the Settlement Agreement and Grid Protocol prevent the inequitable result that any given medical facility would have an unfair advantage by redirecting, diverting or steering EMS transport patients to facilities that are not the closest medical facility.

27. The only exceptions to the Grid Protocol are: (i) Level 2 trauma; (ii) sexual assault; (iii) where the patient or the patient's physician chooses a different facility; or (iv) where JCMC's destination software chooses a different facility. Finally, the Settlement Parties must utilize the Grid Protocol for the duration of the BLS Contract (including extension thereof), until McCabe elected to terminate the Grid Protocol, or by mutual agreement of the Settlement Parties.

28. Upon information and belief, and as set forth below, JCMC is misusing its position as CJC's ambulance provider to steer underinsured and uninsured patients to Christ and steer patients insured by private insurers to JCMC.

29. In addition to the Grid Protocol, the Settlement Agreement requires JCMC to provide the Settlement Parties with monthly audit reports for each EMS patient transport

originating in Jersey City. These monthly audit reports must contain data showing, among other things, the number of EMS patient transports conducted per month by JCMC, where those transports originated, the payor source (i.e., public or private insurance), and to which medical facility the transports are distributed.

30. However, CarePoint recently demanded that JCMC supply the audit reports required under the Settlement Agreement, and JCMC provided reports that excluded payor source for EMS transports from 2019 to present, and has, to date, refused to supply that information.

31. Additionally, the Settlement Agreement requires JCMC to retain an independent auditor to monitor EMS patient transports within Jersey City, New Jersey, including, but not limited to, monitoring emergency transports of patients, and providing periodic reports of the analyzed data.

### **III. JCMC's Redirecting, Diverting or Steering of Patients Away from CarePoint Facilities**

32. Upon information and belief, beginning in at least in 2019, JCMC began redirecting, diverting and/or steering EMS patient transports originating from the Northern Borderline, Christ, and Bayonne Zones away from CarePoint facilities and to JCMC, particularly those patients having private medical insurance or otherwise had the financial wherewithal to pay the fees and costs associated with the EMS transport and any resultant emergency or in-patient services.

33. Conversely, upon information and belief, beginning in 2019, JCMC began redirecting, diverting or steering patients who relied on Medicare or Medicaid, government sponsored healthcare, and charity, and patients who otherwise are unable to pay such fees, to CarePoint facilities.

34. On April 15, 2020, the Commissioner of the New Jersey Department of Health issued a *Notice of Rule Waiver/Modification Pursuant to Executive Order No. 103 (Murphy)(March 9, 2020) and Executive Order No. 119 (Murphy)(April 7, 2020) COVID-19 State of Emergency* (the “April Notice”).

35. The April Notice explicitly states, “[u]nder current EMS rules, an EMT is required to transport a patient to the nearest, most appropriate hospital unless the patient signs a refusal of medical care.” Though the April Notice waives/modifies this requirement for certain COVID-19 patients where EMS personnel believe the patient may safely triage at home, it articulates the requirement that EMS personnel transport patients to the closest available medical facility throughout. The April Notice is still in effect, as is Executive Order No. 103, to which the April Notice refers. Indeed, on June 4, 2021, Governor Murphy issued Executive Order No. 244, stating, “[t]he State of Emergency declared in Executive Order No. 103 . . . continues to exist in the state of New Jersey.” *See* Exec. Order. No. 244 (2021).

36. Upon information and belief, and despite this clearly articulated requirement, JCMC EMS personnel have been maliciously, knowingly and intentionally redirecting, diverting or steering EMS patient transports away from CarePoint facilities and toward JCMC, even where a CarePoint facility is the closest facility geographically.

37. As a result of JCMC’s patient steering, Plaintiffs have suffered a significant continuing loss in revenue arising from a decrease in overall EMS transports to CarePoint facilities, as well as a decrease in any subsequent required emergency or in-patient care.

38. Specifically, McCabe is entitled to revenue arising from every EMS transport distributed to CarePoint medical facilities. Therefore, McCabe has suffered a significant continuing loss in revenue arising from a decrease in overall EMS transports to CarePoint facilities.

39. Additionally, CarePoint has suffered a significant loss in revenue arising from the converse increase in EMS patients either relying on public healthcare or other assistance, or patients having a general inability to pay the costs associated with the EMS transport and any resultant emergency or in-patient services.

40. Finally, as a result of JCMC’s breach of its obligations under the Settlement Agreement and Grid Protocol, Plaintiffs have suffered, and continue to suffer, actual and substantial injuries that constitute irreparable harm in the form of sustained and significant loss of revenue.

***a. Northern Borderline Zone***

41. On average Plaintiffs received revenue in the amount of \$70,700 per visit for each EMS patient transport originating in the North Borderline Zone.

42. Upon information and belief, for the years 2016, 2017, and 2018, there was a relatively equal distribution of EMS transports originating in the North Borderline Zone to both CarePoint facilities and JCMC as follows:

	<b>Total Ambulance Runs</b>				<b>Percentage Distribution</b>		
	<b>JCMC</b>	<b>Christ</b>	<b>Total</b>		<b>JCMC</b>	<b>Christ</b>	<b>Total</b>
<b>2016</b>	139	133	272		51%	49%	100%
<b>2017</b>	406	419	825		49%	51%	100%
<b>2018</b>	625	555	1,180		53%	47%	100%

43. On average, 48.6% (or 1,107 of 2,277) of EMS transports originating in the North Borderline Zone were distributed to CarePoint facilities during this period.

44. However, upon information and belief, the distribution of Northern Borderline Zone EMS transports between JCMC and CarePoint facilities from 2019 to the first two (2) months of 2022 vary widely as compared to previous years.

45. Upon information and belief, during this period EMS patient transports have been distributed as follows:

	Total Ambulance Runs				Percentage Distribution		
	JCMC	Christ	Total		JCMC	Christ	Total
<b>2019</b>	753	453	1,206		62%	38%	100%
<b>2020</b>	845	330	1,175		72%	28%	100%
<b>2021</b>	771	285	1,056		73%	27%	100%
<b>2022</b>	125	59	184		68%	32%	100%

46. On average, only 31.1% (or 1,127 of 3,621) of EMS transports originating in the North Borderline Zone were distributed to CarePoint facilities during this period.

47. Based on average EMS patient transports during 2016-2018, CarePoint facilities should have received at least 1,759 transports during 2019-2022; or at least 632 more than actually received.

48. Therefore, Plaintiffs have been damaged in the amount of at least \$29,672,400, representing expected revenue arising from an additional 632 EMS patient transports originating in the North Borderline Zone during 2019-2022.

***b. Christ Zone***

49. On average Plaintiffs received revenue in the amount of \$70,700 per visit for each EMS patient transport originating in the Christ Zone.

50. Upon information and belief, for the years 2016, 2017, and 2018, EMS transports originating in the Christ Zone were distributed primarily to Christ, as it was the closest facility geographically to this particular zone. Indeed, during this period EMS transports were distributed as follows:

	Total Ambulance Runs		Percentage Distribution
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	<b>JCMC</b>	<b>Christ</b>	<b>Total</b>		<b>JCMC</b>	<b>Christ</b>	<b>Total</b>
<b>2016</b>	117	1,073	1,190		10%	90%	100%
<b>2017</b>	330	3,570	3,900		8%	91%	99%
<b>2018</b>	507	4,057	4,564		11%	89%	100%

51. On average, 90.1% (or 8,700 of 9,654) of EMS transports originating in the Christ Zone were distributed to Christ during this period.

52. However, upon information and belief, the distribution of Christ Zone EMS transports between JCMC and Christ from 2019 to the first two (2) months of 2022 show a significantly lower percentage of such transports being distributed to Christ.

53. Upon information and belief, during this period EMS patient transports have been distributed as follows:

	<b>Total Ambulance Runs</b>				<b>Percentage Distribution</b>		
	<b>JCMC</b>	<b>Christ</b>	<b>Total</b>		<b>JCMC</b>	<b>Christ</b>	<b>Total</b>
<b>2019</b>	865	3,581	4,446		19%	80%	99%
<b>2020</b>	1,380	2,860	4,240		32%	67%	99%
<b>2021</b>	1,371	2,638	4,009		34%	66%	100%
<b>2022</b>	238	380	618		38%	61%	99%

54. On average, only 71% (or 9,457 of 13,313) of EMS transports originating in the Christ Zone were distributed to Christ during this period.

55. Based on average EMS patient transports during 2016-2018, Christ should have received at least 11,995 transports during 2019-2022; or at least 2,536 more than actually received.

56. Therefore, Plaintiffs have been damaged in the amount of at least \$122,615,600, representing expected revenue arising from an additional 2,536 EMS patient transports originating in the Christ Zone during 2019-2022.

**c. Bayonne Zone**

57. On average Plaintiffs received revenue in the amount of \$92,700 per visit for each EMS patient transport originating in the Bayonne Zone.

58. Upon information and belief, for the years 2016, 2017, and 2018, EMS transports originating in the Bayonne Zone were distributed primarily to Bayonne, as this was the closest facility geographically to this particular zone. Indeed, during this period EMS transports were distributed as follows:

	Total Ambulance Runs				Percentage Distribution		
	JCMC	Bayonne	Total		JCMC	Bayonne	Total
<b>2016</b>	59	112	171		34%	65%	99%
<b>2017</b>	231	399	630		36%	63%	99%
<b>2018</b>	518	679	1,217		43%	56%	99%

59. On average, 58.9% (or 1,190 of 2,018) of EMS transports originating in the Bayonne Zone were distributed to Bayonne during this period.

60. However, upon information and belief, the distribution of Bayonne Zone EMS transports between JCMC and CarePoint facilities from 2019 to the first two (2) months of 2022 is reversed in that a majority of transports have been distributed to JCMC rather than to CarePoint facilities.

61. Upon information and belief, during this period EMS patient transports have been distributed as follows:

	Total Ambulance Runs		Percentage Distribution
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	<b>JCMC</b>	<b>Bayonne</b>	<b>Total</b>		<b>JCMC</b>	<b>Bayonne</b>	<b>Total</b>
<b>2019</b>	624	523	1,147		54%	45%	99%
<b>2020</b>	810	418	1,228		65%	33%	98%
<b>2021</b>	867	395	1,262		68%	31%	99%
<b>2022</b>	116	54	170		68%	32%	100%

62. On average, only 36.5% (or 1,390 of 3,807) of EMS transports originating in the Bayonne Zone were distributed to Bayonne during this period.

63. Based on average EMS patient transports during 2016-2018, Bayonne should have received at least 2,242 transports during 2019-2022; or at least 852 more than actually received.

64. Therefore, Plaintiffs have been damaged in the amount of at least \$34,770,120, representing expected revenue arising from an additional 852 EMS patient transports originating in the Bayonne Zone during 2019-2022.

***d. Decrease in reimbursements***

65. In addition to the loss of revenue arising from decreased EMS transport to CarePoint facilities, and resulting decreased inpatient admissions, Plaintiffs also suffered losses due to a decrease in payor network rates as well as lost revenue associated with losing patients from staying with the health system after the ambulance drop off. Plaintiffs lost revenues from primary care, specialty care, imaging, labs, etc., as a result of patients inappropriately brought to JCMC.

66. Indeed, the decreased volume of EMS transports and subsequent inpatient admissions forced Plaintiffs to renegotiate managed care contracts with various insurance providers (to include Aetna, Cigna, UnitedHealthcare, and Oxford Health Plans). Moreover,

JCMC’s improper patient steering forced Plaintiffs to negotiate with insurance providers from a disadvantaged position.

67. From the years 2019 to 2022, HUMC suffered losses in the amount of \$21,757,880 in insurance receivables as follows:

	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>TOTAL</b>
Aetna Loss of Insurance Receivables			\$1,714,250		
Cigna Loss of Insurance Receivables	\$1,216,066	\$799,551	\$2,248,033	\$787,077	
Oxford Health Plans Loss of Insurance Receivables	\$2,498,453	\$2,314,109	\$2,346,500	\$526,867	
UnitedHealthcare Loss of Insurance Receivables	\$523,909	\$1,585,718	\$3,582,607	\$1,682,257	
<b>TOTAL</b>	<b>\$4,238,428</b>	<b>\$4,699,378</b>	<b>\$9,891,390</b>	<b>\$2,928,684</b>	<b>\$21,757,684</b>

68. From the years 2019 to 2022, Christ suffered losses in the amount of \$9,076,520 in insurance receivables as follows:

	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>TOTAL</b>
Aetna Loss of Insurance Receivables			\$291,409	\$215,824	
Cigna Loss of Insurance Receivables	\$326,672		\$1,013,569	\$641,260	
Oxford Health Plans Loss of Insurance Receivables	\$1,254,139	\$1,079,147	\$994,379	\$283,170	
UnitedHealthcare Loss of Insurance Receivables		\$1,591,717	\$2,553,018	\$963,095	
<b>TOTAL</b>	<b>\$833,092</b>	<b>\$1,287,704</b>	<b>\$4,852,375</b>	<b>\$2,103,349</b>	<b>\$9,076,520</b>

69. From the years 2019 to 2022, Bayonne suffered losses in the amount of \$6,796,938 in insurance receivables as follows:

	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>TOTAL</b>
Aetna Loss of Insurance Receivables			\$494,387	\$342,634	
Cigna Loss of Insurance Receivables	\$1,008,563	\$287,470	\$851,616	\$342,827	

Oxford Health Plans Loss of Insurance Receivables	\$987,503	\$791,066	\$646,821	\$250,574	
UnitedHealthcare Loss of Insurance Receivables			\$862,366	\$601,844	
<b>TOTAL</b>	<b>\$1,732,097</b>	<b>\$671,773</b>	<b>\$2,855,190</b>	<b>\$1,537,878</b>	<b>\$6,796,938</b>

70. In total, CarePoint facilities suffered losses of revenue arising from decreased rates in the total aggregate amount of \$37,631,337 from the years 2019 to 2022. These losses are directly attributable to JCMC’s improperly redirecting, diverting or steering EMS transport patients away from the closest CarePoint facility as set forth in the Grid Protocol and to JCMC. As a result, CarePoint had no choice but to negotiate managed care contracts with insurance providers resulting in substantially decreased insurance receivables.

71. Beginning in, at the latest, 2019, JCMC seemingly ignored the Grid Protocol set forth in the Settlement Agreement as JCMC maliciously, knowingly and intentionally steered EMS patient transports to JCMC rather than to the geographically closest facility noted in the Grid Protocol.

72. Upon information and belief, Michael Prilutski, President and Chief Executive Officer of JCMC, openly demanded that referring physicians avoid sending EMS patient transports to CarePoint facilities.

73. Additionally, and possibly more egregiously, JCMC steered patients away from the geographically closest medical facility in clear defiance of the requirement that EMS personnel “are required to transport a patient to the nearest, most appropriate hospital unless the patient signs a refusal of medical care” as articulated in the April Notice.

74. In addition to the foregoing allegations of patient steering, JCMC has alleged that the BLS Contract has been terminated and thus the Settlement Agreement has also terminated. Taking this allegation at face value, the validity of which Plaintiffs dispute, JCMC’s provision of

EMS transport in Jersey City is in violation of the New Jersey Local Public Contracts Law and Regulation (the “Public Contracts Law”).

75. Specifically, the Public Contracts Law requires that every contract for the provision of services, the cost of which in the aggregate exceeds the bid threshold established thereunder, “shall be awarded only by resolution of the governing body of the contracting unit to the lowest responsible bidder after public advertising for bids and bidding therefor . . . .” N.J.S.A. 40A:11-4(a).<sup>1</sup> Public bidding procedures apply even where a third party, rather the governmental contracting body, is responsible for payment of the contract price where the services provided under the contract are performed on behalf of the public body.

76. Furthermore, even if JCMC did not have to participate in the public bidding process to provide EMS transport services, the Public Contract Law’s competitive bidding process nonetheless requires JCMC to provide such emergency services under a properly granted contract. *See* N.J.S.A. 40A:11-4.1(f).

77. Therefore, and upon information and belief, if the BLS Contract has terminated, as alleged by JCMC and disputed by Plaintiffs, then JCMC is providing services that have not been properly contracted for as required under the Public Contracts Law.

78. Alternatively, in the event that the BLS Contract has terminated, as alleged by JCMC and disputed by Plaintiffs, and JCMC is currently providing EMS transport services pursuant to a contract that is not subject to N.J.S.A. 40A:11-4(a) or 40A:11-4.1(f), then such

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<sup>1</sup> Where the cost of the proposed contract does not meet or exceed the established bid threshold “the contract may be awarded by a purchasing agent or other employee so designated by the governing body when so authorized by ordinance or resolution, as appropriate to the contracting unit, without public advertising for bids” unless a lower bid threshold is adopted by resolution or ordinance by the governing body of the contracting unit. *See* N.J.S.A. 40A:11-3.

contract is a functional extension of the BLS Contract. Thus, the Settlement Agreement and accompanying Grid Protocol apply.

79. Finally, through its very conduct in continuing to serve as the exclusive BLS transport provider in Jersey City, JCMC has ratified and/or extended the BLS Contract and, thus, the Settlement Agreement and Grid Protocol.

80. As a result of JCMC's EMS transport redirection, diversion or steering, Plaintiffs have suffered a significant continuing loss in revenue arising from a decrease in overall EMS transports to CarePoint facilities, as well as a decrease in any subsequent required emergency or in-patient care.

81. Additionally, CarePoint has suffered a significant loss in revenue arising from the converse increase in EMS patients either relying on public healthcare or other assistance, or patients having a general inability to pay the fees associated with the EMS transport.

82. Finally, as a result of JCMC's breach of its obligations under the Settlement Agreement and Grid Protocol, Plaintiffs have suffered, and continue to suffer, actual and substantial injuries that constitute irreparable harm in the form of sustained and significant loss of revenue.

**FIRST COUNT**  
**(Breach of Contract)**

83. Plaintiffs repeat and incorporate by reference the allegations contained in the foregoing paragraphs as if fully set forth herein.

84. CarePoint and JCMC, among others, entered into a valid contract in the form of the Settlement Agreement.

85. Under the Settlement Agreement, JCMC is required to distribute EMS patient transports to the medical facilities as set out in the Grid Protocol, as such facilities are the closest such facility for transports originating in any particular zone.

86. Additionally, as to the North Borderline and South Borderline Zones, JCMC is required to follow the Grid Protocol to ensure an equitable distribution of EMS patient transports originating therein between JCMC and CarePoint facilities.

87. JCMC breached its obligations under the Settlement Agreement and Grid Protocol by, among other things, failing to distribute EMS patient transports according to the requirements set forth therein.

88. As a result of JCMC's breach of its obligations under the Settlement Agreement and Grid Protocol, Plaintiffs have suffered, and continue to suffer, a significant continuing loss in revenue arising from a decrease in overall EMS transports to CarePoint; a corresponding decrease in revenues arising from any subsequent required emergency or in-patient care; and a decrease in insurance receivables.

89. Additionally, JCMC's violations of its obligations under the Settlement Agreement and Grid Protocol threaten the viability of the CarePoint System and, therefore, risk irreparable harm to Plaintiffs. .

90. Therefore, Plaintiffs are entitled to an award of compensatory damages in such amounts as may be proven at trial; together with interest, attorneys' fees, and costs.

91. Additionally, Plaintiffs are entitled to permanent injunctive relief in the form of an order enjoining JCMC from improperly redirecting, diverting or steering EMS transport patients away from CarePoint medical facilities, and from further violations by JCMC of the Settlement Agreement and Grid Protocol.

**SECOND COUNT**  
**(Breach of Covenant of Good Faith and Fair Dealing)**

92. Plaintiffs repeat and incorporate by reference the allegations contained in the foregoing paragraphs as if fully set forth herein.

93. The Settlement Parties executed the Settlement Agreement in order to resolve the McCabe Action. Furthermore, as in every contract, there is an implied covenant of good faith and fair dealing in the Settlement Agreement.

94. Pursuant to the Settlement Agreement, EMS patient transports are required to be distributed to certain medical facilities, either JCMC or CarePoint facilities, pursuant to the Grid Protocol.

95. JCMC acted, and continues to act, unfairly and in bad faith in redirecting, diverting or steering EMS transport patients away from the closest facility as set forth in the Grid Protocol and to JCMC.

96. JCMC's unfair and bad faith conduct has denied and continues to deny JCMC the benefit of the bargain as contemplated by the Settlement Parties in the Settlement Agreement and, therefore, violates the covenant of good faith and fair dealing that is implied in every contract.

97. As a result of JCMC's violations of the implied covenant of good faith and fair dealing, Plaintiffs have suffered, and continue to suffer, a significant continuing loss in revenue arising from a decrease in overall EMS transports to CarePoint; a corresponding decrease in revenues arising from any subsequent required emergency or in-patient care; and a decrease in insurance receivables.

98. Additionally, JCMC's breaches of the implied covenant of good faith and fair dealing threaten the viability of the CarePoint System and, therefore, risk irreparable harm to Plaintiffs.

99. Therefore, Plaintiffs are entitled to an award of compensatory damages in such amounts as may be proven at trial; punitive damages of up to five times the amount of compensatory damages pursuant to the New Jersey Punitive Damages Act, N.J.S.A. 2A:15-5.9; together with interest, attorneys' fees, and costs.

100. Additionally, Plaintiffs are entitled to permanent injunctive relief in the form of an order enjoining JCMC from improperly redirecting, diverting or steering EMS transport patients away from CarePoint medical facilities, and from further breaches of the implied covenant of good faith and fair dealing.

**COUNT THREE**  
**(Tortious Interference with Prospective Economic Advantage)**

101. Plaintiffs repeat and incorporate by reference the allegations contained in the foregoing paragraphs as if fully set forth herein.

102. Beginning in, at the latest, 2019, JCMC began redirecting, diverting or steering EMS transports away from CarePoint facilities despite the requirements of the Settlement Agreement and Grid Protocol, and despite the requirements articulated in the April Notice.

103. At all times herein, Plaintiffs had, and continue to have, a reasonable expectation of economic advantage arising from the ownership and operation of medical facilities in the Jersey City and Bayonne areas. Specifically, Plaintiffs had, and continue to have, a reasonable expectation of economic advantage in the form of revenues arising from EMS patient transport to CarePoint medical facilities and any subsequent emergency or in-patient care required thereafter.

104. JCMC intentionally and maliciously interfered with Plaintiffs receiving their reasonably expected economic advantage by redirecting, diverting or steering EMS patient transports away from CarePoint facilities and to JCMC, including patients covered by private health insurance.

105. Notably, EMS personnel “are required to transport a patient to the nearest, most appropriate hospital unless the patient signs a refusal of medical care.” Thus, but for JCMC’s intentional and malicious interference, in the form of patient steering, Plaintiffs would have received their reasonably expected economic advantage in the form of revenues arising from EMS patient transport to CarePoint medical facilities and any subsequent emergency or in-patient care required thereafter.

106. Furthermore, EMS personnel in virtually every jurisdiction have an independent duty to transport patients to an appropriate receiving facility when it is determined that EMS transport is warranted.

107. However, in the current instance, and upon information and belief, JCMC has continually breached this independent duty.

108. Indeed, in bypassing the closest and most appropriate medical facility, JCMC EMS transport personnel not only injure Plaintiffs due to the loss of revenue as set forth herein, but routinely place the public at risk and likely increase morbidity and mortality rates of transported patients.

109. As a result of JCMC’s intentional and malicious interference with Plaintiffs’ prospective economic advantage, Plaintiffs have suffered, and continue to suffer, a significant continuing loss in revenue arising from a decrease in overall EMS transports to CarePoint; a corresponding decrease in revenues arising from any subsequent required emergency or in-patient care; and a decrease in insurance receivables.

110. Additionally, JCMC’s intentional and malicious interference with Plaintiffs’ prospective economic advantage threatens the viability of the CarePoint System and, therefore, risks irreparable harm to Plaintiffs.

111. Therefore, Plaintiffs are entitled to an award of compensatory damages in such amounts as may be proven at trial; punitive damages of up to five times the amount of compensatory damages pursuant to the New Jersey Punitive Damages Act, N.J.S.A. 2A:15-5.9; together with interest, attorneys' fees, and costs.

112. Additionally, Plaintiffs are entitled to permanent injunctive relief in the form of an order enjoining JCMC from improperly redirecting, diverting or steering EMS transport patients away from CarePoint medical facilities, and from further interference by JCMC with Plaintiffs' prospective economic advantage.

**COUNT FOUR**  
**(Monopolization in Violation of the New Jersey Antitrust Act,  
N.J.S.A. 56:9-1 *et seq.*)**

113. Plaintiffs repeat and incorporate by reference the allegations contained in the foregoing paragraphs as if fully set forth herein.

114. N.J.S.A. 56:9-4(a) makes it unlawful for any person, *inter alia*, to monopolize trade or commerce in any relevant market within the State of New Jersey.

115. As described herein, JCMC has engaged in unlawful monopolization in violation of this statute.

116. The relevant market for purposes of JCMC's unlawful monopolization is the market for EMS transport services within the City of Jersey City.

117. As detailed more fully above, JCMC currently possesses monopoly power in the aforementioned relevant market by virtue of its status as the only EMS transportation company operating within the City of Jersey City.

118. Moreover, JCMC has willfully acquired and maintained that monopoly power through the conduct describe more fully above, rather than through growth or development as a consequence of a superior product, business acumen, or historic accident.

119. Among the ways that JCMC has willfully acquired and maintained its monopoly power in the relevant market is its practice of diverting EMS patient transports away from CarePoint medical facilities and to JCMC, despite the fact that a CarePoint facility was, in many instances, the closest appropriate medical facility.

120. JCMC has engaged in these wrongful and malicious business practices to the detriment of not only Plaintiffs, as detailed herein, but to the public at large.

121. As a result of JCMC's unlawful monopolization in violation of N.J.S.A. 56:9-4(a), Plaintiffs have suffered, and continue to suffer, a significant continuing loss in revenue arising from a decrease in overall EMS transports to CarePoint; a corresponding decrease in revenues arising from any subsequent required emergency or in-patient care; and a decrease in insurance receivables.

122. Additionally, JCMC's unlawful monopolization in violation of N.J.S.A. 56:9-4(a), threatens the viability of the CarePoint System and, therefore, risks irreparable harm to Plaintiffs.

123. Therefore, Plaintiffs are entitled to an award of treble damages in an amount to be determined at a trial on the merits, together with interest, attorneys' fees, and costs, pursuant to N.J.S.A. 56:9-12(a).

124. Additionally, Plaintiffs are entitled to permanent injunctive relief in the form of an order enjoining JCMC from improperly redirecting, diverting or steering EMS transport patients away from CarePoint medical facilities and from further unlawful monopolization in violation of the New Jersey Antitrust Act, N.J.S.A. 56:9-1 *et seq.*

**COUNT FIVE**  
**(Attempted Monopolization in Violation of the New Jersey Antitrust Act,  
N.J.S.A. 56:9-1 *et seq.*)**

125. Plaintiffs repeat and incorporate by reference the allegations contained in the foregoing paragraphs as if fully set forth herein.

126. N.J.S.A. 56:9-4(a) also makes it unlawful for any person, *inter alia*, to attempt to monopolize trade or commerce in any relevant market within this State.

127. As described herein, JCMC has engaged in unlawful attempted monopolization in violation of this statute.

128. The relevant market for purposes of JCMC's unlawful attempted monopolization is the market for emergency or in-patient care among patients taken by EMS transport originating with the City of Jersey City.

129. As detailed more fully above, JCMC has engaged in predatory or anticompetitive conduct within the relevant market by misusing its status as the only EMT provider within the City of Jersey City for the purposes of diverting EMS patient transports away from CarePoint medical facilities in and around the City of Jersey City and to JCMC, despite the fact that a CarePoint facility was, in many instances, the closest appropriate medical facility.

130. Moreover, JCMC specifically intends to monopolize the market for emergency or in-patient care among patients taken by EMS transport originating with the City of Jersey City, as evidenced by its conduct in violating the Grid Protocol and routinely bypassing the closest, most appropriate medical facility during its EMS transports.

131. Furthermore, there is a dangerous probability that JCMC will succeed in its attempted monopolization, as JCMC is currently the only entity providing EMS transport services

within the City of Jersey City, and its patient steering practices threaten the viability of the hospitals within the CarePoint System.

132. As a result of JCMC's unlawful attempted monopolization in violation of N.J.S.A. 56:9-4(a), Plaintiffs have suffered, and continue to suffer, a significant continuing loss in revenue arising from a decrease in overall EMS transports to CarePoint; a corresponding decrease in revenues arising from any subsequent required emergency or in-patient care; and a decrease in insurance receivables.

133. Additionally, JCMC's unlawful monopolization in violation of N.J.S.A. 56:9-4(a), threatens the viability of the CarePoint System and, therefore, risks irreparable harm to Plaintiffs.

134. Therefore, Plaintiffs are entitled to an award of treble damages in an amount to be determined at a trial on the merits, together with interest, attorneys' fees, and costs, pursuant to N.J.S.A. 56:9-12(a).

135. Additionally, Plaintiffs are entitled to permanent injunctive relief in the form of an order enjoining JCMC from improperly redirecting, diverting or steering EMS transport patients away from CarePoint medical facilities and from further unlawful attempted monopolization in violation of the New Jersey Antitrust Act, N.J.S.A. 56:9-1 *et seq.*

**WHEREFORE**, Plaintiffs demand judgment against Defendant:

- (A) On all Counts, actual damages in an amount to be determined at a trial on the merits;
- (B) On Counts Two, Three, and Four, punitive damages of up to five times the amount of compensatory damages pursuant to the New Jersey Punitive Damages Act, N.J.S.A. 2A:15-5.9;
- (B) On Counts Four and Five, treble damages in an amount to be determined at a trial on the merits pursuant to N.J.S.A. 56:9-12(a);
- (C) On Counts Four and Five, an award of Plaintiffs' attorneys' fees pursuant to N.J.S.A. 56:9-12(a);

- (D) On all Counts, an order enjoining JCMC from improperly redirecting, diverting or steering EMS transport patients away from CarePoint medical facilities and from further violations of JCMC's contractual, common law, and statutory obligations to Plaintiffs, including, but not limited to, JCMC's obligations under the New Jersey Antitrust Act, N.J.S.A. 56:9-1 *et seq.*;
- (E) On all Counts, an order directing disgorgement of all profits received by JCMC arising from EMS transports for the years of 2019, 2020, 2021, and 2022 conducted in violation of the Public Contracts Law, in an amount to be determined at a trial on the merits;
- (E) On all Counts, granting Plaintiffs such additional consequential, incidental, and punitive damages to the extent authorized by applicable law and in an amount to be determined at a trial on the merits;
- (F) On all Counts, an award of pre-judgment and post-judgment interest, and Plaintiffs' costs of suit.
- (G) On all Counts, such other and further relief the Court deems just and proper.

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Dated: August 8, 2022

**DESIGNATION OF TRIAL COUNSEL**

Anthony P. La Rocco and George Barbatsuly are hereby designated as trial counsel for the Plaintiffs.

**JURY TRIAL DEMAND**

Plaintiffs request a jury trial to the extent a jury trial is permitted by law.

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Dated: August 8, 2022

**CERTIFICATION PURSUANT TO R. 4:5-1**

Pursuant to Rule 4:5-1, it is stated that the matter in controversy is not the subject of any other action pending in the Court or of any arbitration proceeding. To the best of our belief, no further actions regarding the issues herein are contemplated by Plaintiff. Further, other than the parties set forth in this pleading, we know of no other parties that should be joined in the above action. In addition, we recognize the continuing obligation of each party to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

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