UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

MSPA CLAIMS 1, LLC, a Florida Limited Liability Company, MSP RECOVERY CLAIMS, SERIES LLC, a Delaware entity, and SERIES 16-05-456, a series of MSP RECOVERY CLAIMS, SERIES LLC,

Plaintiffs,

v. Case No. _____

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, a Florida profit corporation,

Defendant.
_____/

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant State Farm Mutual Automobile Insurance Company ("State Farm") hereby removes to this Court the state court action described below pursuant to 28 U.S.C. §§ 1331, 1332, 1441, and 1446. This Court has jurisdiction over said action on the basis of (i) the Class Action Fairness Act ("CAFA") and (ii) federal question jurisdiction. In support of this Notice of Removal, State Farm states the following:

BACKGROUND

1. This is a putative class action pending in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, styled *MSPA Claims 1, LLC v. State Farm Mutual Automobile Insurance Co.* (Case No. 2015-17104-CA-01). Over a series of amendments, Plaintiffs have transformed this case from a $15,000 County Court action into a substantial class action that raises significant federal questions and satisfies the jurisdictional requirements of CAFA.

2. This action was originally commenced by MSP Recovery, LLC[1] in County Court in Miami-Dade County, Florida on December 22, 2014. *See* Complaint, *MSP Recovery, LLC v. State Farm Mut. Auto. Ins. Co.*, Case No. 2014-16131-CC-25.[2] The County Court complaint asserted an individual claim against State Farm under the Medicare Secondary Payer Act ("MSP Act") for damages, alleging that, as a primary plan under the MSP Act, State Farm had failed to reimburse MSP Recovery, LLC's assignee, Florida Healthcare Plus ("FHCP"), for medical bills incurred by a State Farm insured (referenced as M.M.) that FHCP had paid conditionally. *See generally id.* The County Court complaint averred that it was "an action for damages less than Fifteen Thousand Dollars ($15,000.00), exclusive of interests, costs, and attorney's fees." *Id.* ¶ 1. Due to the inconsequential amount in controversy, State Farm answered the County Court complaint, and the case proceeded in County Court.

3. On February 20, 2015, MSP Recovery, LLC filed an Amended Complaint in County Court.[3] The Amended Complaint continued to aver that this was "an action for damages less than Fifteen Thousand Dollars ($15,000.00), exclusive of interests, costs, and attorney's fees" *Id.* ¶ 1. The Amended Complaint kept its claims largely the same, but added new facts regarding the assignment of "recovery and/or reimbursement rights" on which plaintiff MSP Recovery, LLC relied for standing, alleging that FHCP assigned such rights to La Ley Recovery, which in turn assigned them to MSP Recovery, LLC. *Id.* ¶¶ 5-6.

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[1] The entity "MSP Recovery, LLC" was subsequently substituted with MSPA Claims 1, LLC and is no longer a Plaintiff in this action.

[2] A copy of the County Court complaint can be found in Composite Exhibit A at pages 1-29.

[3] A copy of the Amended Complaint filed in County Court can be found in Composite Exhibit A at pages 37-58.

4. Neither the original Complaint nor the Amended Complaint contained any class-action allegations.

5. On May 29, 2015, MSP Recovery, LLC moved to transfer the case to Circuit Court on the basis that its request for damages exceeded the County Court's jurisdictional limit. The motion was granted on July 10, 2015, and the case was opened in Circuit Court in Miami-Dade County as Case No. 2015-17104-CA-01.[4]

6. On February 16, 2016, MSPA Claims 1, LLC was substituted for MSP Recovery, LLC as Plaintiff.

7. More than a year after the case had been filed in County Court, Plaintiff MSPA Claims 1, LLC amended its complaint on March 16, 2016 to assert class-action claims.[5]

8. In its Amended Class Action Complaint for Damages, Plaintiff MSPA Claims 1, LLC considerably altered the nature of its action against State Farm. Dropping its MSP Act claim, MSPA Claims 1, LLC asserted four state-law claims for breach of contract and subrogation against State Farm. *See generally id.* ¶¶ 75-104. The plaintiff sought to represent a class of 25-50 entities, or their assignees, that "contracted directly with" the Centers for Medicare & Medicaid Services ("CMS") to provide Medicare benefits through a Medicare Advantage plan and that have "made payment(s) of benefits . . . as a secondary payer . . . for which the [State Farm], as primary payer . . . , was/is financially responsible . . . ." *Id.* ¶¶ 55, 66. The Amended Class Action Complaint for Damages expressly sought to recover only the $10,000 maximum benefit under Florida's no-fault insurance laws for the representative claimant

[4] A copy of the court's order granting MSP Recovery, LLC's motion to transfer can be found in Composite Exhibit A at pages 59-60.

[5] A copy of the March 16, 2016 Amended Class Action Complaint for Damages can be found in Composite Exhibit A at pages 65-89. The conversion of the case into a class action required State Farm to retain counsel familiar with complex litigation.

and for each Medicare beneficiary for whom MSPA Claims 1, LLC's assignor, FHCP, made payment as a secondary payer, and alleged that the total damages sought did not exceed $75,000.00. *Id.* ¶¶ 1, 24 n.3. State Farm could not remove the Amended Class Action Complaint because the CAFA requirement that there be 100 or more putative class members was not satisfied and there was no federal question alleged. *See id.* ¶ 66 & Exh. F thereto.

9. On September 12, 2016, MSPA Claims 1, LLC filed its Third Amended Class Action Complaint for Damages in Circuit Court, which made various revisions to the pleading's allegations regarding standing and the relationship between the Plaintiff and its assignors. *Compare* Amended Class Action Complaint ¶¶ 38-54 *with* Third Amended Class Action Complaint ¶¶ 38-68.[6] Like the previous class-action complaint, this pleading asserted only state-law causes of action for breach of contract and subrogation (*see id.* ¶¶ 89-111), and expressly alleged that "[n]o individual recovery exceeds" $10,000.00 and that the assignor's "aggregate claims against [State Farm] do not exceed" $75,000.00. *Id.* ¶ 1. Plaintiff MSPA Claims 1, LLC continued to seek to represent a class of 25-50 entities, or their assignees, that "contracted directly with CMS . . . to provide Medicare benefits through a Medicare Advantage plan" and that have "made payment(s) of benefits . . . as a secondary payer . . . for which the [State Farm], as primary payer . . . , was/is financially responsible . . . ." *Id.* ¶¶ 69, 80. As with the previous class-action complaint, State Farm could not remove the Third Amended Class Action Complaint because the CAFA requirement that there be 100 or more putative class members was not satisfied and there was no federal question alleged. *See id.* ¶¶ 80 & Exh. B thereto.

[6] A copy of the September 12, 2016 Third Amended Class Action Complaint can be found in Composite Exhibit A at pages 94-204.

10. The nature and scope of this action drastically and substantially changed, however, on July 5, 2018 when Plaintiff filed its Fourth Amended Class Action Complaint for Damages ("Fourth Amended Complaint" or "FAC").[7]

11. The Fourth Amended Complaint added two new Plaintiffs in addition to MPSA Claims 1, LLC: MSP Recovery Claims, Series LLC and Series 16-05-456, a Series of MSP Recovery Claims, Series LLC. *Id.* ¶¶ 28-31. The Fourth Amended Complaint also expanded the representative claims from one to four, adding new allegations regarding three Medicare beneficiaries—P.K., E.C., and M.P.—who were also insured under State Farm no-fault insurance policies and for whom Plaintiffs' assignees made conditional payments for their accident-related medical expenses that State Farm allegedly failed to reimburse. *See id.* ¶¶ 12-26. In addition, the Plaintiffs' alleged standing to sue State Farm is premised on three representative "assignment agreements," which Plaintiffs contend assigned to them "any and all rights to recover conditional payments made on behalf of Assignors' health plan members and Enrollees, including those who were insured by" State Farm. *Id.* ¶¶ 35-48. Two of the representative assignors are new to the Fourth Amended Complaint: Health First Health Plans, Inc. ("through its administrator Administrative Plans, Inc."), and Interamerican Medical Center Group, LLC ("IMC"). Finally, the Fourth Amended Complaint omits the state-law claims for breach of contract and subrogation asserted in Plaintiffs' prior pleadings, and replaces them with a federal claim against State Farm for damages under the MSP Act. *See id.* ¶¶ 105-20.

12. The Fourth Amended Complaint also revises and substantially broadens the proposed class definition to include not only entities, or their assignees, that "contracted directly with" CMS (such as Medicare Advantage Organizations or "MAOs"), but first-tier and

[7] A copy of the Fourth Amended Complaint is attached hereto as Exhibit B.

downstream entities as well. *See id.* ¶¶ 72-78; *infra* ¶ 27 (defining first-tier and downstream entities). As a result of the amendments, the proposed class exceeded, for the first time, 100 putative members. *See id.* ¶ 76. The Fourth Amended Complaint contains no limitations on the alleged amount in controversy, does not limit any individual claim to the $10,000 maximum benefit under Florida's no-fault insurance laws, and seeks a substantial amount of damages in connection with each representative claim and on behalf of the putative class.

13. Section 1441(a) provides that "[e]xcept as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a). Venue in this Court is proper under 28 U.S.C. § 1441(a) and Local Rule 3.1 because (i) this action is being removed from the state court in which it was originally filed, the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, which sits within the Southern District of Florida, and (ii) the Fourth Amended Complaint alleges that the cause of action accrued in Miami-Dade County, Florida. *See* FAC ¶ 33.

GROUNDS FOR REMOVAL

I. THIS COURT HAS JURISDICTION PURSUANT TO THE CLASS ACTION FAIRNESS ACT ("CAFA").

14. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. § 1332(d), the codification of CAFA.

15. CAFA confers jurisdiction on federal district courts over class actions in which (1) any plaintiff class member is diverse in citizenship from any defendant; (2) there are at least 100 proposed plaintiff class members; and (3) the aggregate amount in controversy exceeds

$5 million, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d). CAFA authorizes removal of such actions pursuant to 28 U.S.C. § 1446.

16. As a threshold matter, this action is a proposed "class action" as defined by CAFA because it is a case brought by a representative of a putative class and was filed in state court pursuant to a statute or rule authorizing such a class. *See* 28 U.S.C. § 1332(d)(1)(B).[8] Specifically, Plaintiffs bring their claims under Florida Rule of Civil Procedure 1.220, which authorizes class actions, and represent that they bring this lawsuit against State Farm "on their own behalf and on behalf of all Class members or their assignees operating in Florida." FAC ¶ 73. The Plaintiffs "seek class certification of the claims alleged in this action and judgment for damages for themselves and the class members." *Id.*

17. As demonstrated below, all of the remaining requirements for CAFA jurisdiction are satisfied here. Moreover, to the extent there is any doubt whether the CAFA requirements are met, it is clear from both Supreme Court precedent and CAFA's legislative history that such doubts should be resolved in favor of federal jurisdiction. *See, e.g.*, *Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547, 554 (2014) (stating that "no antiremoval presumption attends cases invoking CAFA, which Congress enacted to facilitate adjudication of certain class actions in federal court"); S. Rep. 109-14, at 43 (2005) ("Overall, [CAFA] is intended to expand substantially federal court jurisdiction over class actions. Its provisions should be read broadly, with a strong preference that interstate class actions should be heard in a federal court if properly removed by any defendant."); *id.* at 35 (explaining that the intent of CAFA "is to strongly favor the exercise of federal diversity jurisdiction over class actions with interstate ramifications").

[8] "[T]he term 'class action' means any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action." *Id.*

Indeed, the Eleventh Circuit has recognized that, in light of the Supreme Court's holding in *Dart*, courts "may no longer rely on any presumption in favor of remand in deciding CAFA jurisdictional questions." *Dudley v. Eli Lilly & Co.*, 778 F.3d 909, 912 (11th Cir. 2014).

A. CAFA's Diversity-of-Citizenship Requirement Is Satisfied.

18. Under CAFA, the required diversity of citizenship is satisfied so long as there is "minimal diversity," which exists if "any member of a class of plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. § 1332(d)(2)(A); *see also Evans v. Walter Indus., Inc.*, 449 F.3d 1159, 1163 (11th Cir. 2006) (stating that "[u]nder CAFA, federal courts now have original jurisdiction over class actions in which . . . there is minimal diversity (at least one plaintiff and one defendant are from different states)"). Here, there is complete diversity.

19. Plaintiff MSPA Claims 1, LLC is a limited liability company, organized under Florida law, with its principal place of business in Miami-Dade County, Florida. FAC ¶ 28. Thus, under CAFA, Plaintiff MSPA Claims 1, LLC is a citizen of Florida.[9]

20. Plaintiff MSP Recovery Claims, Series LLC "is a Delaware series limited liability company with its principal place of business" in Miami-Dade County, Florida. FAC ¶¶ 29-31. Thus, under CAFA, Plaintiff MSP Recovery Claims, Series LLC is a citizen of both Delaware and Florida.

21. Plaintiff Series 16-05-456, is a series of MSP Recovery Claims, Series LLC, and has its principal place of business in Miami-Dade County, Florida. *Id.* ¶ 31.

[9] Under CAFA, "an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized." 28 U.S.C. § 1332(d)(10). For purposes of CAFA, a limited liability company is considered to be an "unincorporated association." *See Ferrell v. Express Check Advance of S.C. LLC*, 591 F.3d 698, 699-700 (4th Cir. 2010); *see also O'Shaughnessy v. Cypress Media, L.L.C.*, 2014 WL 1791065, at *4 (W.D. Mo. May 6, 2014) (same).

22. State Farm is a mutual insurance company organized and incorporated under the insurance laws of the State of Illinois. State Farm's principal place of business is the State of Illinois. *See* Declaration of Kristy Stapleton, ¶ 3, attached hereto as Exhibit C. Therefore, State Farm is a citizen of Illinois. *See* 28 U.S.C. § 1332(c)(1).

23. In light of the Plaintiffs' Florida and Delaware citizenships and State Farm's Illinois citizenship, CAFA's minimal diversity requirement is satisfied. *See* 28 U.S.C. § 1332(d)(2).

B. The Putative Class Consists Of More Than 100 Members.

24. Although State Farm does not concede that Plaintiffs have defined a proper class or that a class can be defined or maintained, Plaintiffs' class definition in the Fourth Amended Complaint makes clear that the proposed class would include at least 100 members, thus satisfying the requirement of 28 U.S.C. § 1332(d)(5)(B).

25. Plaintiffs assert a broadly defined class of non-governmental organizations or their assignees that provide benefits under Medicare Part C in the State of Florida. Plaintiffs define the putative class as follows:

> All non-governmental organizations (including, but not limited to MAOs, first-tier entities, and downstream entities) or their assignees, that provide benefits under Medicare Part C in Florida and made conditional payments for the accident-related medical expenses of Enrollees within the applicable limitations period (the "Class Period"), for which the defendant had provided no-fault insurance coverage, but failed to make primary payment or full reimbursement. This class definition excludes (a) defendant, its officers, directors, management, employees, subsidiaries, and affiliates; and (b) any judges or justices involved in this action and any members of their immediate families.

FAC ¶ 78.

26. Under Medicare Part C, Medicare beneficiaries may elect to receive Medicare benefits through private insurers, including Medicare Advantage Organizations ("MAOs"). *See* 42 U.S.C. § 1395w-21. According to Plaintiffs' allegations, there are at least 37 MAOs who

contracted with CMS to "provide benefits under Medicare Part C in Florida." *See* FAC ¶ 80; Composite Exhibit A at pp. 202-04 (Exh. F to 3d Am. Compl.); Composite Exhibit A at pp. 88-89 (Exh. B. to Am. Class Action Compl.).

27. Plaintiffs' expanded proposed class definition in the Fourth Amended Complaint, however, is not limited to MAOs. For the first time, it also includes other "non-governmental entities," such as first-tier and downstream entities. FAC ¶¶ 74, 76. First-tier entities are defined as "any party that enters into an acceptable written arrangement with [a Medicare Advantage] organization or contract applicant to provide administrative services or health care services for a Medicare eligible individual." 42 C.F.R. § 422.500(b); *see also* FAC ¶ 73. Downstream entities are defined as "any party that enters into an acceptable written arrangement below the level of the arrangement between [a Medicare Advantage] organization (or contract applicant) and a first tier entity." 42 C.F.R. § 422.500(b); *see also* FAC ¶ 74.[10] According to Plaintiffs' own allegations, the putative class—for the first time—includes "***hundreds*** of first-tier and downstream entities (and their assigns)," in addition to at least 37 MAOs. FAC ¶ 76 (emphasis added).

28. Although State Farm does not concede the propriety or breadth of the class as alleged by Plaintiffs, because Plaintiffs' proposed class definition includes at least 37 MAOs that contracted with CMS to provide benefits under Medicare Part C and "hundreds of first-tier and downstream entities (and their assigns)" (*id.* ¶ 76), it is clear that the proposed class would include at least 100 members, satisfying CAFA's numerosity requirement. *See Murray v. Midland Funding, LLC*, 2015 WL 3874635, at *2 (D. Md. June 23, 2015) (finding that CAFA

[10] According to the FAC, "[f]irst-tier and downstream entities administer and provide Medicare services to Medicare beneficiaries who are MAO Enrollees. The first-tier and downstream entities bear the full risk of loss because of their contractual obligations with MAOs." FAC ¶ 75.

jurisdiction existed where, among other things, the "complaint adequately allege[d] numerosity to permit a conclusion that the total plaintiff class members easily exceed 100 in number"); *Murray v. DirecTV, Inc.*, 2013 WL 12131736, at *2 (C.D. Cal. July 23, 2013) (finding that the numerosity requirement was satisfied because the complaint alleged that "more than 57,000 persons" were putative class members and, thus, "it [wa]s apparent on the face of the [complaint] that there [we]re over 100 putative class members").

C. CAFA's Amount-In-Controversy Requirement Is Satisfied.

29. Under CAFA, the claims of the individual, putative class members are aggregated to determine whether the amount in controversy exceeds the sum or value of $5,000,000, exclusive of interest or costs. *See* 28 U.S.C. § 1332(d)(6). The amount in controversy is not the amount the plaintiffs are likely to recover, but rather "'an estimate of the amount that will be put at issue in the course of the litigation.'" *Dudley*, 778 F.3d at 913 (quoting *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 751 (11th Cir. 2010)). "[A] defendant's notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold." *Dart*, 135 S. Ct. at 554; *see also Pretka*, 608 F.3d at 754 ("[A] removing defendant is not required to prove the amount in controversy beyond all doubt or to banish all uncertainty about it.").

30. Although State Farm believes that it will establish that it does not have any liability to Plaintiffs or to any putative class member, it is clear from the Fourth Amended Complaint and Plaintiffs' class definition that the amount in controversy exceeds $5,000,000.

31. Plaintiffs' allegations relate to accident-related medical expenses that were conditionally paid by MAOs, first-tier entities, and downstream entities to Medicare beneficiaries, who were insured under State Farm no-fault insurance policies. FAC ¶¶ 1-7.

Plaintiffs seek "double damages under the [Medicare Secondary Payer] Act for [State Farm's alleged] failure to properly reimburse conditional payments for [those Medicare beneficiaries'] accident-related medical expenses within the applicable limitations period." *Id.* ¶ 7.

32. Plaintiffs identify four "representative claims" in the Fourth Amended Complaint. Plaintiffs contend that M.M. is a Medicare beneficiary enrolled in a Medicare Advantage plan managed by one of "the MSP Plaintiffs' Assignors." FAC ¶ 10. Plaintiffs allege that M.M. was a State Farm insured at the time M.M. incurred accident-related medical expenses, and that State Farm, as the primary payer under the MSP Act, failed to pay M.M.'s expenses or to reimburse one of Plaintiffs' assignors for the conditional payment of those expenses. *Id.* ¶¶ 10-11. According to the Fourth Amended Complaint, State Farm "owes the MSP Plaintiffs at least $14,918.00 for M.M.'s accident-related medical expenses." *Id.* ¶ 11. Plaintiffs allege similar facts with respect to the representative claims of P.K., E.C., and M.P. (*see id.* ¶¶ 12-23), concluding that State Farm "owes the MSP Plaintiffs at least $410,271.03 for P.K.'s accident-related medical expenses" (*id.* ¶ 15), "at least $57,569.90 for E.C.'s accident-related medical expenses" (*id.* ¶ 19), and "at least $39,321.00 for M.P.'s accident-related medical expenses" (*id.* ¶ 23). Just on those four ***representative*** claims alone, and in light of Plaintiffs' claim for double damages under the MSP Act,[11] Plaintiffs' allegations place the amount in controversy at a minimum of $1,044,159.86 ($522,079.93 multiplied by 2).

33. But given Plaintiffs' allegations that State Farm's failure to fulfill its obligation as a primary payer was "systemic" and "systematic" and that the four representative claims "constitute only a small fraction of the conditional payments for which [State Farm] failed to

[11] *See* FAC at Prayer for Relief, ¶ (c)(1).

reimburse the MSP Plaintiffs and the Class Members" (FAC ¶¶ 1, 8, 26 n.5), it is reasonable to conclude that the aggregate amount in controversy for the putative class is substantially higher.

34. Indeed, based on the damages sought by Plaintiffs on the four representative claims, the ***average*** amount of damages sought per claimant, including double damages, is $261,039.97. Applying that ***average***, if each of the 37 putative MAO class members has only one outstanding or unreimbursed claim for a State Farm insured, then the amount in controversy reaches $9,659,478.89 (including double damages)—well above the $5,000,000 threshold for CAFA.

35. In addition to the putative MAO class members, as noted, Plaintiffs allege for the first time that there are "***hundreds***" of first-tier and downstream entities included within the putative class and that those entities have also incurred damages. FAC ¶¶ 74-76 (emphasis added). Inclusion of their claims would increase the amount in controversy even further above $5,000,000. *See Cappuccitti v. DiNecTV, Inc.*, 623 F.3d 1118, 1122-23 n.7 (11th Cir. 2010) (using "simple arithmetic" to conclude that the complaint's allegations satisfied CAFA's jurisdictional requirements); *see also Scott v. Cricket Commc'ns, LLC*, 865 F.3d 189, 196 (4th Cir. 2017) (noting that "a removing defendant is somewhat constrained by the plaintiff" and explaining it is appropriate for defendant's allegations as to the amount in controversy to rely on "reasonable estimates, inferences, and deductions").

36. Moreover, Plaintiffs allege that there are "more than 5,700 instances where defendant (or one of its affiliates) reported to CMS its responsibility to pay for insureds' accident-related medical expenses but may have paid nothing and failed to reimburse the MSP Plaintiffs or their Assignors for the Assignors' conditional payments." FAC ¶ 26. Thus, the aggregate amount in controversy would be increased substantially by each of the "hundreds of"

MAO, first-tier entity, and downstream entity class members having paid out more than one single claim.

37. Plaintiffs do not limit their damages claims in the Fourth Amended Complaint to the maximum amount allowed for a single claim ($10,000) under Florida's no-fault insurance laws. Even if there is a possibility that members of the putative class "might not ultimately recover the full" amount in controversy implicated by the Fourth Amended Complaint's allegations, "that possibility does not shut the door on federal jurisdiction." *S. Fla. Wellness, Inc. v. Allstate Ins. Co.*, 745 F.3d 1312, 1318 (11th Cir. 2014). Instead, "the pertinent question [at the jurisdictional stage] is what is *in controversy* in the case, not how much the plaintiffs are ultimately likely to recover." *Id.* (citations and internal quotation marks omitted; emphasis in original).

38. Nonetheless, even if the Court evaluated only the maximum $10,000 no-fault benefit in determining the aggregate amount in controversy, it would still exceed the $5,000,000 threshold for CAFA. For instance, conservatively assuming there were 200 class members[12] and each have two unreimbursed claims[13] valued at $10,000, then the aggregate amount in controversy would reach $8,000,000 (including double damages).

39. Plaintiffs' allegations thus demonstrate that the aggregated value of the "claims of the individual class members . . . exceed the sum or value of $5,000,000.00." 28 U.S.C. § 1332(d)(2).

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[12] Plaintiffs allege there are "hundreds." FAC ¶¶ 74-76.

[13] Plaintiffs allege that, while there are only "hundreds" of putative class members, there are "more than 5,700 instances where defendant (or one of its affiliates) reported to CMS its responsibility to pay for insureds' accident-related medical expenses but may have paid nothing and failed to reimburse the MSP Plaintiffs or their Assignors for the Assignors' conditional payments." FAC ¶ 26. These allegations indicate that each putative class member will have conditionally paid more than one claim relative to a State Farm insured.

D. None of CAFA's Exceptions Apply.

40. CAFA sets forth two mandatory exceptions and one discretionary exception to the application of federal jurisdiction, all of which require that the primary defendants be citizens of the state in which the action is originally filed. *See* 28 U.S.C. § 1332(d)(3)-(4). None of those exceptions apply here because the only named defendant, State Farm, is a citizen of Illinois—not Florida. *See id.* § 1332(c)(1); Exhibit C.

II. THIS COURT ALSO HAS FEDERAL QUESTION JURISDICTION.

41. This Court also has federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331.

42. Under 28 U.S.C. § 1331, "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." "A case 'aris[es] under' federal law within the meaning of § 1331 . . . if 'a well-pleaded complaint establishes either that ***federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law***.'" *Empire Healthchoice Assur., Inc. v. McVeigh*, 547 U.S. 677, 689-90 (2006) (quoting *Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Tr. for S. Cal.*, 463 U.S. 1, 27-28 (1983); emphasis added). Even where (unlike here) a plaintiff has couched its complaint *entirely* in terms of state law, a federal court still has jurisdiction if a federal issue is "(1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress." *Gunn v. Minton*, 568 U.S. 251, 258 (2013) (citing *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 314 (2005)). Federal jurisdiction is, thus, appropriate where the result depends on the resolution of "a dispute or controversy respecting the validity, construction, or effect" of federal law. *Dunlap v. G&L*

Holding Grp. Inc., 381 F.3d 1285, 1290 (11th Cir. 2004) (quoting *Mobil Oil Corp. v. Coastal Petro. Co.*, 671 F.2d 419, 422 (11th Cir. 1982)).

43. "The existence of federal jurisdiction is tested as of the time of removal." *Ehlen Floor Covering, Inc. v. Lamb*, 660 F.3d 1283, 1287 (11th Cir. 2011). Jurisdiction is determined by looking at the face of the plaintiff's complaint at the time of removal. *Id.*

44. It is clear from the face of the Fourth Amended Complaint that Plaintiffs' causes of action are created by federal law and that Plaintiffs' claims depend on resolution of substantial questions of federal law that will be dispositive of the case.

45. Plaintiffs' claims and the allegations of the Fourth Amended Complaint center on, and arise from, the federal Medicare Secondary Payer Act. *See, e.g.*, FAC ¶¶ 1-7, 45-72. Indeed, Plaintiffs expressly allege that "[t]his lawsuit is brought under the Act's private right of action by the MSP Plaintiffs . . . on behalf of a Class of similarly situated Medicare Payers and their assignees." FAC ¶ 6.[14] Plaintiffs' claims for damages are premised on their allegation that "defendant failed to reimburse the Assignors and Class Members, as required by the [Medicare Secondary Payer] Act." *Id.* Moreover, the Fourth Amended Complaint unambiguously raises federal issues appropriate for resolution in federal court: "This lawsuit advances the interests of the MSP Act and Medicare because when Medicare Payers recover conditional payments[,] they 'spend less on providing coverage for their enrollees' and the 'Medicare Trust Fund . . . achieve[s] cost savings." *Id.* ¶ 7 (citation omitted).

46. Count I is a private cause of action under § 1395y(b)(3)(A) of the MSP Act. *See* FAC ¶¶ 105-15. As the Fourth Amended Complaint alleges, the MSP Act establishes a private cause of action for double damages "in the case of a primary plan which fails to provide for

[14] The previous complaint, which was amended by the Fourth Amended Complaint, did not raise a federal cause of action. *See supra* ¶ 9.

primary payment (or appropriate reimbursement) in accordance with" the Act. *Humana Med. Plan, Inc. v. W. Heritage Ins. Co.*, 832 F.3d 1229, 1234-35 (11th Cir. 2016) (citing 42 U.S.C. § 1395y(b)(3)(A)). The private cause of action is available to a Medicare beneficiary whose primary plan has not paid Medicare or the beneficiary's healthcare provider." *Id.* In construing § 1395y(b)(3)(A), courts have extended the statute's private cause of action to MAOs and healthcare providers who have not been reimbursed by a primary plan. *Id.* at 1238.

47. Plaintiffs expressly, and unambiguously, invoke § 1395y(b)(3)(A)'s private cause of action in Count I. *See* FAC ¶ 106 ("The MSP Plaintiffs assert a private cause of action under to 42 U.S.C. § 1395y(b)(3)(A) on behalf of themselves and a Class of similarly-situated Medicare Payers."). Because the Fourth Amended Complaint includes a recognized claim created by federal statute, this Court is vested with federal question jurisdiction to resolve it.

48. Although entitled "Breach of Contract for Failure to Pay PIP Benefits," Count II similarly raises a substantial question of federal law under the MSP Act, 42 U.S.C. § 1395y, and its implementing regulations. Count II purports to assert a breach of contract claim, alleging that State Farm breached its insurance contracts with its insureds when it "failed to pay the accident-related medical expenses of its insureds who were also Enrollees [in Medicare Part C]. FAC ¶ 114. Count II alleges that—pursuant to federal Medicare regulations—MAOs are subrogated to the insureds' rights to recover from State Farm for such breach. *Id.* ¶ 113 (citing 42 C.F.R. § 411.26).[15] Under the referenced regulations, the United States is entitled to be subrogated to a

[15] Although other courts in this district have remanded actions asserting claims arising under Florida Statutes § 627.736, which governs Florida no-fault benefits, Plaintiffs' Fourth Amended Complaint here does not depend on the Florida no-fault statute. Rather, § 627.736 is mentioned only once in the Fourth Amended Complaint, and not at all in the breach of contract claim. Moreover, in stark contrast to those other actions, Plaintiffs here rely on federal law to establish their entitlement to sue for breach of contracts to which they are not parties, and federal law will have to be interpreted and applied in order to resolve Plaintiffs' claims. *Compare*, *e.g.*,

Medicare beneficiary's right to recover against his or her insurance company. *See* 42 U.S.C. § 1395y(b)(2)(B)(iv); 42 C.F.R. § 411.26(a).[16] Plaintiffs will only be entitled to recovery if the same provisions also entitle MAOs, first-tier entities, and downstream entities (and, by extension, Plaintiffs as assignees) to be subrogated to their members' rights to recover against their insurance company. But it is not clearly established whether MAOs, first-tier entities, and downstream entities may, in fact, exercise the same subrogation rights as the United States. Indeed, 42 U.S.C. § 1395y and 42 C.F.R. § 411.26(a) make no reference to MAOs. As a result, in adjudicating Plaintiffs' Count II, this Court will be required to interpret federal law—namely, 42 U.S.C. § 1395y and 42 C.F.R § 411.26(a)—to determine whether MAOs are allowed to subrogate claims against State Farm. Plaintiffs' claim will, thus "be supported if the federal law is given one construction or effect and defeated if it is given another." *Dunlap*, 381 F.3d at 1290 (internal quotation marks and citation omitted).

49. Plaintiffs are not State Farm policyholders; rather, Plaintiffs assert that they are assignees of numerous MAOs, first-tier entities, and downstream entities, which allegedly paid for medical services provided to Medicare beneficiaries who were insured by State Farm. Count II alleges that State Farm breached its contractual obligation "to pay its insureds' accident-

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FAC ¶¶ 113-16 (alleging that "Defendant was contractually obligated to pay its insureds' accident-related medical expenses" and that, under the implementing regulations of the MSP Payer Act, Plaintiffs are entitled to sue for such a breach) *with MSPA Claims 1, LLC v, Allstate Prop. & Cas. Ins. Co.*, 2016 WL 4370078, at *2, 4 (S.D. Fla. June 30, 2016) (finding no federal jurisdiction where "[a]ll four counts recite, identically, that 'Defendant failed and/or refused to make complete payments of the No-fault benefits as required by Section 627.736, Florida Statutes" and the complaint did not "even hint that it [was] initiating its claim under federal law"); *MSPA Claims 1, LLC v. Liberty Mut. Fire Ins. Co.*, 2016 WL 3751481, at *3 (S.D. Fla. July 14, 2016) ("Plaintiff alleges that its right to reimbursement is based on Florida Statute § 627.736.").

[16] 42 C.F.R. § 411.26(a) provides that "[w]ith respect to services for which Medicare paid, CMS is subrogated to any individual, provider, supplier, physician, private insurer, State agency, attorney, or any other entity entitled to payment by a primary payer."

related medical expenses" when it "failed or refused to appropriately reimburse the MSP Plaintiffs' Assignors and Class Members for [insureds'/Enrollees'] accident-related medical expenses." FAC ¶¶ 113-14. Plaintiffs go on to state that the regulations implementing 42 U.S.C. § 1395y—namely, 42 C.F.R. § 411.26—give the MAOs, first-tier entities, and downstream entities the right to sue on the policyholder's behalf to recover payments made by the MAOs, first-tier entities, and downstream entities, which State Farm was contractually obligated to make. *Id.* ¶ 113-15. Citing 42 C.F.R. § 411.26, Count II concludes that, "[u]nder applicable law, the MSP Plaintiffs' Assignors and Class Members are permitted to subrogate their Enrollees' right of action against" State Farm. *Id.* ¶ 113. Thus, Plaintiffs' entitlement to pursue—let alone recover on—Count II hinges on the application and interpretation of the federal Medicare Secondary Payer Act and its implementing regulations.

50. Indeed, in order to recover from State Farm under Count II, Plaintiffs must demonstrate that, among other things, (i) the MSP Act required State Farm to reimburse Medicare (as a primary payer) for the payments allegedly made on behalf of State Farm insureds by MAOs, first-tier entities, downstream entities, or their assignors; and (ii) the MSP Act permits MAOs, first-tier entities, and downstream entities to collect, in the place of State Farm insureds, the reimbursement owed by State Farm to Medicare. In sum, Plaintiffs' ability to recover under Count II will necessarily depend on the Court's application and interpretation of the MSP Act and its implementing regulations and, thus, this Count raises a federal question.

51. Because Count I is expressly created by federal law and Count II arises under and depends on resolution of a substantial question of federal law,[17] this Court has federal question jurisdiction to hear those claims.

PROCEDURAL REQUIREMENTS
AND TIMELINESS OF REMOVAL

52. Removal of this case to this Court on the basis of CAFA and federal question jurisdiction is timely and permissible.

53. 28 U.S.C. § 1453(b) makes clear that "the 1-year limitation [on removing diversity cases to a U.S. district court] under section 1446(c)(1)" does not apply to class actions. 28 U.S.C. § 1453(b). Rather, "under CAFA, class actions may be removed at *any* point during the pendency of litigation in state court, so long as removal is initiated within thirty days after the defendant is put on notice that a case which was not removable based on the face of the complaint has become removable." *Dudley v. Eli Lilly & Co.*, 778 F.3d 909, 913 (11th Cir. 2014) (citation omitted; emphasis in original).

54. The policy underlying this procedure is sound: "Any other reading of §§ 1332 and 1453 would thwart clear congressional intent by permitting plaintiffs to evade federal jurisdiction through clever gamesmanship: filing an individual complaint in state court, waiting a year, then transforming the original complaint into a class action by amendment, when it would

[17] Even *if* the Court were to conclude that Court II does not necessarily involve substantial questions of federal law, the Court has supplemental jurisdiction over that count because all of Plaintiffs' claims arise from State Farm's alleged failure to reimburse Plaintiffs for the conditional payments they made for the accident-related medical expenses of Medicare Part C beneficiaries, who were enrolled in Medicare Advantage plans (offered or managed by Plaintiffs) and also insured by State Farm. Accordingly, Count II is "so related to claims in the action within [the Court's] original jurisdiction that they form part of the same case or controversy." 28 U.S.C. § 1367.

be too late for a defendant, now facing a class action, to file a notice of removal." *Reece*, 760 F.3d at 776.

55. Applying that policy to this case, removal under CAFA is appropriate. Indeed, this case was originally filed in County Court (the jurisdiction of which extends to disputes involving $15,000 or less), seeking only individual relief and such a negligible amount of damages that invoking federal jurisdiction would have been uneconomical and impracticable. And, as discussed above, the intermediate class-action complaints were not removable. *See supra* ¶¶ 8-9. With the filing of the Fourth Amended Complaint, the case has since been drastically transformed into a broad putative class action with substantially increased exposure that is now a CAFA-caliber class action.

56. Accordingly, under the provisions of CAFA, this removal was timely effected within 30 days of Plaintiffs' filing of the Fourth Amended Complaint, which rendered this action removable.

57. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served upon State Farm are attached hereto as Composite Exhibit A.

58. Contemporaneously with the filing of this Notice of Removal, written notice has been served upon the Plaintiffs through their counsel of record and a copy of this Notice of Removal has been filed with the Circuit Court for Miami-Dade County, Florida.

RESERVATION OF DEFENSES

59. As of the filing of this Notice of Removal, no further proceedings have been heard in the state court.

60. Nothing in this Notice of Removal shall be interpreted as a relinquishment of State Farm's right to assert any defense or affirmative matter.

61. State Farm reserves the right to amend this Notice of Removal.

Dated: August 3, 2018.

Respectfully submitted,

/s/ Benjamine Reid
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Attorneys for Defendant State Farm Mutual Automobile Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Removal was filed on August 3, 2018 with the Clerk of Court by using the CM/ECF system, which system served all counsel or parties of record, and that a true and correct copy of the foregoing was served via electronic mail and by U.S. Mail, first-class postage prepaid, to all counsel or parties on the Service List below.

/s/ Benjamine Reid

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Attorney for Plaintiffs

115196911.9

IN THE COUNTY COURT OF THE
11th JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

MSP RECOVERY, LLC.,
a Florida profit corporation,

Plaintiff,

CASE NO.: 2014-16131-CC 25

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,
a Foreign profit corporation,.

Defendant,
_____/

COMPLAINT FOR DAMAGES FOR FALIURE TO COMPLY WITH MEDICARE SECONDARY PAYOR ACT

COMES NOW, Plaintiff, MSP RECOVERY, LLC. (hereinafter referred to as "MSP "), by and through its undersigned counsel and hereby brings this Complaint in against Defendant, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, a Foreign profit corporation (hereinafter referred to as "STATE FARM"), and, in support thereof, states as follows:

GENERAL ALLEGATIONS

1. This is an action for damages less than Fifteen Thousand Dollars ($15,000.00), exclusive of interests, costs, and attorney's fees.

2. At all times material hereto, Plaintiff, MSP, was and is a Florida profit corporation organized to conduct business in the state of Florida with a principal mailing address of: 5000 S.W. 75th Avenue, Suite 400, Miami, Florida 33155. MSP is a medical provider and/or assignee that does business in Miami-Dade County, Florida. Pursuant to the terms of the Medicare Advantage Plan,

the insurance policy involved herein was issued by FHCP to cover claims made as delineated in the policy of insurance and as required by a Medicare Advantage Plus participant.

3. At all times material hereto, Defendant, STATE FARM, is a Foreign Profit Corporation organized to conduct business in the state of Florida with a registered agent and address of: CHIEF FINANCIAL OFFICER, 200 E. Gaines Street, Tallahassee, FL 32399.

4. MSP, is the assignee of FHCP as it pertains to any and all rights as assignee and/or as the party entitled to recover any amounts owed to FHCP by nature of STATE FARM's obligation as a primary payer to pay for member, M.M. 's ("PATIENT") medical bills. STATE FARM was under an affirmative duty to pay for any and all medical services related to the accident. STATE FARM had to either pay for the medical services, pay back FHCP as a Medicare Advantage and/or set aside benefits to pay FHCP as FHCP was not required to pay for any of these services.

5. STATE FARM is M.M.'s ("PATIENT") PIP insurer and was otherwise the primary payor as it relates to any Medicaid bills that were accident related.

6. Plaintiff is not in possession of the policy but Plaintiff intends to request a copy of the policy in course of discovery and it will be filed.

7. Venue is proper in this Court pursuant to Florida Statutes, as the cause of action relating to insured, Patient, accrued in Miami-Dade County, Florida.

8. FHCP has complied with all conditions precedent to the institution of this action.

9. All parties are otherwise *sui juris*.

FACTS AND PROCEDURAL BACKGROUND COMMON TO ALL COUNTS

10. On or about May 29th, 2014, PATIENT, was attempting to exit a parking lot on 4849 South Military Trail when a second vehicle struck him from behind. PATIENT suffered bodily injury and otherwise incurred medical bills. *See Exhibit "A" Police Report.*

11. At all times material hereto, Patient received medical services and/or supplies that FHCP paid. All of these claims are now owned by MSP.

12. At all times material hereto, FHCP is a Health Maintenance Organization (HMO) that is focused on serving the needs of its members through its PrePaid, Medicare, and Medicare manage care programs delivered through its integrated team of physicians and health care professionals.

13. The subject medical services and/or supplies rendered to PATIENT were all reasonable, related, and necessary, and were required to be paid within thirty (30) days of receipt of the claim.

14. On or about September 9th, 2014, the undersigned attorney sent a letter to Karen Renshaw, informing him that the undersigned firm represented La Ley Recovery Systems – FHCP, Inc. as an assignee of all subrogation claims and/or claims whereby Florida Health Care Plus was deemed to be a secondary payor pursuant to 42 U.S.C. §627.4127. In said letter, the undersigned attorney placed STATE FARM on notice that pursuant to FHCP's rights as an MA (Medicare Advantage Plan) and /or Medicaid assigned oblige; FHCP had the same rights as would Medicare/and or Medicaid to the extent that payment for medical benefits had been made. *See Exhibit "B," Letter to Karen Renshaw.*

15. On that same day, MSP also sent its Notice of Lien Pertaining to Payments Made on Behalf of a Medicare Advantage Plan Member in order to serve as formal notice that a lien is being asserted pursuant to the Medicare Secondary Payor Act Section 1862(b)(2)(B)(ii) of the Social Security Act and/or Equitable Rights as provided by Florida law. *See Exhibit "C" Notice of Lien Pertaining to Payments Made on Behalf of a Medicare Advantage Plan Member.*

16. On or about December 9th, 2014, the undersigned attorney sent a formal demand letter,

under §627.736 (10) for payment of medical services and treatment provided by FHCP. As per the FHCP Medical Claims Report, there was a total charge of $14,498.00 for the medical services provided to PATIENT. *See Exhibit "D," Demand Letter and Medical Claims Report.*

17. FHCP is a participant provider in the Medicare program that conducts business in the State of Florida under the Medicare Secondary Payer Act ("MSP").

18. MSP seeks to recover and be reimbursed for the medical services provided to PATIENT times two. Because STATE FARM failed to pay as a primary payor. STATE FARM is now required to pay twice the amount.

19. As of the filing of this lawsuit, STATE FARM has failed to make the payments and otherwise failed to reimburse FHCP. STATE FARM was obligated and had an affirmative duty to investigate and pay prior to FHCP.

LEGAL BACKGROUND

20. Medicare embodies our nation's commitment to the health care of seniors and the disabled and is the "nation's second largest social insurance program" with over 47.5 million people who were covered during 2011. *See 2011 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplemental Medical Insurance Trust Funds, available at https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/ReportsTrustFunds/downloads/tr2011.pdf.* The Medicare Statute divides Medicare benefits into four (4) categories: Part A, "Hospital Insurance Benefits for Aged and Disabled;" Part B, "Supplementary Medical Benefits for Aged and Disabled;" Part C, "Medicare Advantage;" and Part D, which provides prescription drug coverage for Medicare enrollees. *See In re Avandia Mktg*, 685 F.3d 353, 357 (3d Cir. Pa. 2012). This suit challenges practices that

drain money from the Medicare trust funds and increase the costs borne by the elderly and low-income beneficiaries.

21. The Medicare Act guarantees that eligible Medicare Beneficiaries have the right to elect to receive Medicare benefits either through the original Medicare fee-for-service program or through a Medicare Advantage Plan. 42 U.S.C. § 13955w-21(a). The funds for the Medicare Advantage benefits originate from the Medicare Trust Funds.

22. The Secretary of the U.S. Department of Health and Human Services is the federal officer that is responsible for the administration of the Medicare program, and has delegated authority over Medicare to a subunit of HHS, the Centers for Medicare and Medicare Services (hereinafter referred to as "CMS"). 42 U.S.C. §1395hh(a)(1) and §395kk(a). In order to provide for the day-to-day administration of the Medicare program, CMS usually acts through contractors wherein the "Secretary may perform any of his functions under this subchapter directly, or by contract providing for payment in advance or by way of reimbursement, and in such installments, as the Secretary may deem necessary." 42 U.S.C. § 1395kk(a).

23. The Secretary through CMS is able to control Medicare Advantage organizations through the bid process, its contracts with the organization, audits, and through the threat of sanctions and contract termination. Additionally, the Secretary, through CMS, is able to determine to whom to award Medicare Advantage contracts to, as well as whether to approve or reject annual bids.

24. In order to qualify to contract as a Medicare Advantage organization, the interested entity must demonstrate that they have sufficient financial and administrative capacity to fulfill their obligations under the contract with CMS. It should be noted that CMS pays Medicare Advantage organizations and delegates to them the obligation to administer, pay, and assume Medicare's economic risk for the Medicare benefits provided to Medicare Advantage enrollees. The amount

that is paid to the Medicare Advantage organization is carefully calibrated and takes the following factors into consideration: geographic location, age, disability status, gender, institutional status, and the health status of each Medicare Advantage enrollee. 42 U.S.C. §1395w-23(c).

Introduction To The Medicare Secondary Payer Act ("MSP")

25. In 1980, while confronted with skyrocketing Medicare costs, Congress recognized that those responsible for the payment of medical costs when people were injured (i.e. employers and liability insurers) often allowed Medicare to pay the medical bills as the "primary payer" when an employee or a tort victim was older than 65. In order to curtail this practice, Congress enacted the Medicare as Secondary Payer Act ("MSP"), which made liability insurers and self-insured tortfeasors responsible as the "primary" payers of [an] injured persons' medical costs." 42 U.S.C. § 1395y(b)(2)(A).

26. The underlying intent behind the enactment of the MSP was to shift the financial burden of health care from the Medicare program to private insurers in order to lower the cost of the Medicare program.

27. The MSP creates a federal coordination of benefits wherein workmen's' compensation, liability insurance and self-insurance, and no-fault insurance are deemed primary, and Medicare benefits are secondary. See 42 U.S.C. § 1395y(b)(2); 42 C.F.R. §422.108(b)(3); *Appalachian Regional Healthcare v. Shalala,* 131 F.3d 1050, 1052 (D.C. Cir. 1997). The MSP provides that Medicare cannot pay medical expenses where "payment has been made or can reasonably be expected to be made under a workmen's compensation law or plan of the United States or a State or under an automobile or liability insurance policy or plan (including a self-insured plan) or under no fault insurance." *See In re Avandia Mktg*, 685 F.3d 353, 358 (3d Cir. Pa. 2012). Under

the MSP, "Medicare benefits are secondary to benefits payable by a primary payer even if State law or the primary payer states that its benefits are secondary to Medicare benefits or otherwise limits its payments to Medicare beneficiaries." 42 C.F. R. § 411.32(a)(1). However, if a payment has not been made or cannot be expected to be promptly made by a primary payer, Medicare, as the secondary payer, may make a conditional payment. When Medicare makes this conditional payment, it is entitled to receive a reimbursement, once the "government receives notice that a third-party payment has been or could be made with respect to the same item or service." *See Fanning v. United States*, 346 F.3d 386, 389 (3d Cir. Pa. 2003). In addition to seeking reimbursement, Medicare has the "right to intervene in the action against a tortfeasor and can bring or join any action against the responsible primary payor . . . and pursue third parties, including attorneys, who receive payments of any sums which should be reimbursed to Medicare." *See Denekas v. Shalala*, 943 F. Supp. 1073, 1083 (S.D. Iowa 1996); see also 42 U.S.C. §2651(a) (2002).

28. As currently codified, the MSP provides, in relevant part, as follows:

> **"(2) Medicare secondary payer**
>
> **(A) In general -** Payment under this subchapter may not be made, except as provided in subparagraph (B), with respect to any item or service to the extent that—
>
> **(i)** payment has been made, or can reasonably be expected to be made, with respect to the item or service as required under paragraph (1), or
>
> **(ii)** payment has been made [3] or can reasonably be expected to be made [3] under a workmen's compensation law or plan of the United States or a State or under an automobile or liability insurance policy or plan (including a self-insured plan) or under no fault insurance.
>
> In this subsection, the term "primary plan" means a group health plan or large group health plan, to the extent that clause (i) applies, and a workmen's compensation law or plan, an automobile or liability insurance policy or plan (including a self-insured plan) or no fault insurance, to the extent that clause (ii) applies. An entity

that engages in a business, trade, or profession shall be deemed to have a self-insured plan if it carries its own risk (whether by a failure to obtain insurance, or otherwise) in whole or in part.

(B) Conditional payment

(i) Authority to make conditional payment The Secretary may make payment under this subchapter with respect to an item or service if a primary plan described in subparagraph (A)(ii) [4] has not made or cannot reasonably be expected to make payment with respect to such item or service promptly (as determined in accordance with regulations). Any such payment by the Secretary shall be conditioned on reimbursement to the appropriate Trust Fund in accordance with the succeeding provisions of this subsection.

(ii) Repayment required A primary plan, and an entity that receives payment from a primary plan, shall reimburse the appropriate Trust Fund for any payment made by the Secretary under this subchapter with respect to an item or service if it is demonstrated that such primary plan has or had a responsibility to make payment with respect to such item or service. A primary plan's responsibility for such payment may be demonstrated by a judgment, a payment conditioned upon the recipient's compromise, waiver, or release (whether or not there is a determination or admission of liability) of payment for items or services included in a claim against the primary plan or the primary plan's insured, or by other means. If reimbursement is not made to the appropriate Trust Fund before the expiration of the 60-day period that begins on the date notice of, or information related to, a primary plan's responsibility for such payment or other information is received, the Secretary may charge interest (beginning with the date on which the notice or other information is received) on the amount of the reimbursement until reimbursement is made (at a rate determined by the Secretary in accordance with regulations of the Secretary of the Treasury applicable to charges for late payments).

(iii) Action by United States In order to recover payment made under this subchapter for an item or service, the United States may bring an action against any or all entities that are or were required or responsible (directly, as an insurer or self-insurer, as a third-party administrator, as an employer that sponsors or contributes to a group health plan, or large group health plan, or otherwise) to make payment with respect to the same item or service (or any portion thereof) under a primary plan. The United States may, in accordance with paragraph (3)(A) collect double damages against

> any such entity. In addition, the United States may recover under this clause from any entity that has received payment from a primary plan or from the proceeds of a primary plan's payment to any entity. The United States may not recover from a third-party administrator under this clause in cases where the third-party administrator would not be able to recover the amount at issue from the employer or group health plan and is not employed by or under contract with the employer or group health plan at the time the action for recovery is initiated by the United States or for whom it provides administrative services due to the insolvency or bankruptcy of the employer or plan. An action may not be brought by the United States under this clause with respect to payment owed unless the complaint is filed not later than 3 years after the date of the receipt of notice of a settlement, judgment, award, or other payment made pursuant to paragraph (8) relating to such payment owed..."

29. In the event that a primary plan fails to pay as a primary or make the appropriate reimbursement, Section 1395y(b)(3)(A) of the MSP allows for a private cause of action, which provides as follows:

> "There is established a private cause of action for damages (which shall be in an amount double the amount otherwise provided) in the case of a primary plan which fails to provide for primary payment (or appropriate reimbursement) in accordance with paragraphs (1) and (2)(A)."

According to *In re Avandia Mktg*, the MSP "lends itself to [FHCP's] position that any private party may bring" a private cause of action, as the provision "is broad and unambiguous, placing no limitations upon which private (i.e. non-governmental) actors can bring suit for double damages when a primary plan fails to appropriately reimburse any secondary payer." *In re Avandia Mktg*, 685 F.3d 353, 359 (3d Cir. Pa. 2012).

30. As such, FHCP is deemed to be the assignee of all subrogation claims and/or claims whereby FHCP is deemed to be a secondary payor pursuant to 42 U.S.C. §1395y(b)(3)(A). According to *Gusmano v. Allstate*, 2013 U.S. Dist. 165467 (E.D. Mich. 2013), in order for the

MSP to apply, the primary plan must either refuse coverage or terminate a plan holder's coverage and thereby force Medicare to make a conditional payment on its behalf. *Id.*

31. Overall, the purpose of the MSP is to help preserve the Medicare Trust Fund and limit Medicare beneficiaries' out-of-pocket costs. *See Fanning v. United States*, 346 F.3d 386, 388-89. (3d Cir. 2003).

Payment Requirements and the Recovery of Payments

32. Nearly all of the health claims are electronically submitted by the providers. As required by law, regulation, contract, or convention, these claims contain standardized data sets.

33. Medicare Advantage organizations must promptly process and/or pay or deny claims in order to comply with the specific requirements that are established by federal law, and the terms of the contracts entered into with CMS. 42 U.S.C. §1395w-27(f).

34. When a Medicare Advantage organizations makes a payment for medical services that are the responsibility of a primary plan under the MSP, those payments are conditional whether the Medicare Advantage organization knew about the primary payer or not. It should be noted that a conditional payment can be defined as a "Medicare payment for services for which another payer is responsible, made either on the bases set forth in subparts C through H of this part, or because the intermediary or carrier did not know that the other coverage existed." 42 C.F.R. §411.21.

35. As previously indicated, the MSP allows for a private cause of action wherein double damages can be recovered in the event that a primary plan fails to pay a primary or make an appropriate reimbursement. As such, a Medicare Advantage organization with advanced Medicare benefits possesses standing to bring a private cause of action

36. When a Medicare Advantage plan recovers reimbursement from primary plans or other liable parties, these reimbursements help reduce Medicare expenditures by the Medicare Trust Funds.

37. Moreover, pursuant to Florida Statute§ 627.736(4)(c) a primary payer must hold $5,000.00 in reserve to pay for emergency services and car or hospital inpatient care. Fla. Stat. § 627.736(4)(c) states in pertinent part:

> " ...[T]he insure must reserve $5,000.00 of personal injury protection benefits for payment to physicians licensed under chapter 485 or 459 or dentist licensed under chapter 466 who provide emergency services and care, as defined in s. 395.002, or who provide hospital inpatient care..."

In the case where emergency or inpatient services where provided at a hospital, the primary payer must hold the funds in reserve and pay for those services first before any other service providers are paid.

Federal Law Preempts State Law

38. Federal courts do not have jurisdiction to address the merits of a Medicare Advantage Plan's recovery action. *See Humana v. Mary Reale*, Case No: 10-21493 (S.D., Fla 2010).

39. However, a state cannot take away Medicare Advantage Plan's right to bill for services for which Medicare is not the primary payer. *See In re Avandia Mktg*, 685 F.3d 353, 357 (3d Cir. Pa. 2012).

40. "Medicare benefits are secondary to benefits payable by a primary payer even if State law or the primary payer states that its benefits are secondary to Medicare benefits or otherwise limits its payments to Medicare beneficiaries." 42 C.F. R. § 411.32(a)(1). The Federal Law preempts state laws including the thirty (30) days time payment provisions. Accordingly, there is no requirement to wait thirty (30) days before payment is due.

41. Pursuant to *In re Avandia Mktg*, a Medicare Advantage Plan shall exercise the same rights to recover from a primary plan, entity, or individual that the Secretary exercises under the MSP regulations in subparts B through D of part 411. *See In re Avandia Mktg*, 685 F.3d 353, 357 (3d Cir. Pa. 2012).

COUNT I: PRIVATE CAUSE OF ACTION FOR DOUBLE DAMAGES

42. MSP re-alleges and re-incorporates the allegations referenced to in Paragraphs 1 through 40.

43. FHCP made payments of Medicare benefits for medical services provided to PATIENT.

44. Congress has "established a private cause of action for damages (which shall be in an amount double the amount otherwise provided) in the case of a primary plan which fails to provide for primary payment (or appropriate reimbursement)" in accordance with Section §1395y(b)(3)(A) of the MSP.

45. STATE FARM has not made the appropriate reimbursements to FHCP for the medical services that were rendered to PATIENT wherein FHCP advanced payments.

46. Furthermore, STATE FARM did not comply with Fla. Stat. § 627.736(4)(c) by failing to hold in reserve $5,000.00 to pay for emergency services and/or hospital inpatient services.

47. MSP brings this action under the private cause of action established by 42 U.S.C. §1395y(b)(3)(A) to recover from STATE FARM, double damages for their failure to pay as primary or to make the appropriate reimbursement.

48. Under the private cause of action established by 42 U.S.C. §1395y(b)(3)(A), MSP is entitled to recover "an amount double the amount otherwise provided." FHCP made payments of Medicare benefits in the amount of $14,498.00, and is entitled to recover double that amount from STATE FARM.

WHEREFORE, Plaintiff, MSP, demands judgment against STATE FARM for double damages, reasonable attorneys fees, court costs, interests, and such other and further relief as this Court deems just and proper.

COUNT II: ACTION FOR DAMAGES

49. MSP re-alleges and re-incorporates the allegations referenced to in Paragraphs 1 through 40.

50. Notwithstanding any other provision of law, a Medicare Advantage plan may charge, or authorize the provider to charge for items and services provided to its enrollees in circumstances in which the MSP law makes Medicare the secondary payer behind any law, plan, or policy described in §1395y(b)(2). 42 U.S.C. §1395y(b)(2). Further, CMS interprets the term to "charge" in the right-to-charge law to mean to "bill." 42 C.F.R. §422.108(c).

51. The Medicare Advantage organization or provider may charge in accordance with the charges that are allowed under a law, plan, or policy. 42 U.S.C. §1395w-22(a)(4); 42 C.F.R. §422.108.

52. The reasonable expenses for the services that were rendered to PATIENT totaled $14,498.00.

53. In accordance with the charges allowed, Plaintiff, MSP, seeks to charge STATE FARM for the medical expenses and services resulting from the injuries sustained by PATIENT in the accident on May 29th, 2014.

54. MSP brings this Count under the federal common law to collect from STATE FARM the charges that are authorized by federal law.

55. MSP does not proceed on the theory that §1395w-22(a)(4) implies a federal cause of action. However, MSP does proceed on the theory that Congress expected that MA organizations would be able to collect their charges.

56. Federal common law applies because a significant conflict exists between federal policy or interest, and state policy or interest. As, the MSP statute was designed to curb the skyrocketing health costs and preserve the fiscal integrity of the Medicare system.

WHEREFORE, Plaintiff, MSP, demands judgment against STATE FARM for double damages, reasonable attorneys fees, court costs, interests, and such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiff, MSP, hereby demands a trial by jury of all issues so triable.

Dated: December 22nd, 2014

Respectfully submitted,

MSP RECOVERY LAW FIRM
Counsel for Plaintiff
5000 S.W. 75th Avenue, Suite 400
Miami, Florida 33155
Direct Line (305) 614-2222

By: /s/ John H. Ruiz
□ John H. Ruiz, Esq., FL Bar No. 928150
□ Karen J. Barnet-Backer, Esq., FL Bar No. 054482
□ Rebecca Rubin del Rio, Esq., FL Bar No. 057013
□ Gustavo J. Losa, Esq., FL Bar No. 852791
□ Christine Lugo, Esq., FL Bar No. 109515
□ Gino Moreno, Esq., FL Bar No. 112099
Service email: serve@msprecoverylawfirm.com

FLORIDA TRAFFIC CRASH REPORT

LONG FORM ☐ SHORT FORM (Shaded Areas) ☒ UPDATE ☐

TOTAL # OF VEHICLE SECTION(S) 2
TOTAL # OF PERSON SECTION(S) 2
TOTAL # OF NARRATIVE SECTION(S) 1

MAIL TO: DEPARTMENT OF HIGHWAY SAFETY & MOTOR VEHICLES
TRAFFIC CRASH RECORDS, NEIL KIRKMAN BUILDING
TALLAHASSEE, FL 32399-0537

CRASH DATE	TIME OF CRASH	DATE OF REPORT	REPORTING AGENCY CASE NUMBER	HSMV CRASH REPORT NUMBER
05/29/2014	1:02 PM	05/29/2014	14-08025	8414409169

CRASH IDENTIFIERS

COUNTY CODE	CITY CODE	COUNTY OF CRASH	PLACE OF CITY OF CRASH	CHECK IF WITHIN CITY LIMITS	TIME REPORTED	TIME DISPATCHED
06	42	PALM BEACH	GREENACRES	☒	1:03 PM	1:03 PM

TIME ON SCENE	TIME CLEARED SCENE	CHECK IF COMPLETED	REASON (If Investigation NOT Complete)	Notified By: 1 Motorist 2 Law Enforcement
1:06 PM	1:35 PM	☒		2

ROADWAY INFORMATION (CHOOSE ONLY 1 OF 4 OPTIONS)

CRASH OCCURRED ON STREET, ROAD, HIGHWAY	AT STREET ADDRESS #	AT LATITUDE AND LONGITUDE
S MILITARY TRL	1 4849	2

FEET	MILES	N S E W	AT / FROM INTERSECTION WITH STREET, ROAD, HIGHWAY	OR FROM MILEPOST #
			3	4

Road System Identifier: 1 Interstate 2 U.S. 3 State 4 County 5 Local 6 Turnpike/Toll 7 Forest Road 8 Private Roadway 9 Parking Lot 77 Other, Explain in Narrative

Type of Shoulder: 1 Paved 2 Unpaved 3 Curb

Type of Intersection: 1 Not at Intersection 2 Four-Way Intersection 3 T-Intersection 4 Y-Intersection 5 Traffic Circle 6 Roundabout 7 Five-Point, or More 77 Other, Explain in Narrative

CRASH INFORMATION (CHECK IF PICTURES TAKEN) ☐

Light Condition: 1 Daylight 2 Dusk 3 Dawn 4 Dark-Lighted 5 Dark-Not Lighted 6 Dark-Unknown Lighting 77 Other, Explain in Narrative 88 Unknown

Weather Condition: 1 Clear 2 Cloudy 3 Rain 4 Fog, Smog, Smoke 5 Sleet/Hail/Freezing Rain 6 Blowing Sand, Soil, Dirt 7 Severe Crosswinds 77 Other, Explain in Narrative

Roadway Surface Condition: 1 Dry 2 Wet 4 Ice/Frost 5 Oil 6 Mud, Dirt, Gravel 7 Sand 8 Water (standing/moving) 77 Other, Explain in Narrative 99 Unknown

School Bus Related: 1 No 2 Yes, School Bus Directly Involved 3 Yes, School Bus Indirectly Involved

Manner of Collision/Impact: 1 Front to Rear 2 Front to Front 3 Angle 4 Sideswipe, Same Direction 5 Sideswipe, Opposite Direction 6 Rear to Side 7 Rear to Rear 77 Other, Explain in Narrative 88 Unknown

First Harmful Event: 1 Overturn/Rollover 2 Fire/Explosion 3 Immersion 4 Jackknife 5 Cargo/Equipment Loss or Shift 6 Fell/Jumped From Motor Vehicle 7 Thrown or Falling Object 8 Ran into Water/Canal 9 Other Non-Collision 10 Pedestrian 11 Pedalcycle 12 Railway Vehicle (train, engine) 13 Animal 14 Motor Vehicle in Transport 15 Parked Motor Vehicle 16 Work Zone/Maintenance Equipment 17 Struck By Falling, Shifting Cargo 18 Other Non-Fixed Object 19 Impact Attenuator/Crash Cushion 20 Bridge Overhead Structure 21 Bridge Pier or Support 22 Bridge Rail 23 Culvert 24 Curb 25 Ditch 26 Embankment 27 Guardrail Face 28 Guardrail End 29 Cable Barrier 30 Concrete Traffic Barrier 31 Other Traffic Barrier 32 Tree (standing) 33 Utility Pole/Light Support 34 Traffic Sign Support 35 Traffic Signal Support 36 Other Post, Pole or Support 37 Fence 38 Mailbox 39 Other Fixed Object (wall, building, tunnel, etc.)

First Harmful Event within Interchange: 1 No 2 Yes 88 Unknown

First Harmful Event Location: 1 On Roadway 2 Off Roadway 3 Shoulder 4 Median 6 Gore 7 Separator 8 In Parking Lane or Zone 9 Outside Right-of-Way 10 Roadside 88 Unknown

First Harmful Event Relation to Junction: 1 Non-Junction 2 Intersection 3 Intersection-Related 4 Driveway/Alley Access Related 5 Railway Grade Crossing 14 Entrance/Exit Ramp 15 Crossover - Related 16 Shared-Use Path or Trail 17 Acceleration/Deceleration Lane 18 Through Roadway 77 Other, Explain in Narrative 88 Unknown

Contributing Circumstances: Road: 4 Work Zone (construction/maintenance/utility) 6 Shoulders (none, low, soft, high) 7 Rut, Holes, Bumps 9 Worn, Travel-Polished Surface 10 Road Surface Condition (wet, icy, snow, slush, etc.) 11 Obstruction in Roadway 12 Debris 13 Traffic Control Device Inoperative, Missing or Obscured 14 Non-Highway Work 77 Other, Explain in Narrative 88 Unknown

Contributing Circumstances: Environment: 1 None 2 Weather Condition 3 Physical Obstruction(s) 4 Glare 5 Animal(s) in Roadway 77 Other, Explain in Narrative 88 Unknown

Work Zone Related: 1 No 2 Yes 88 Unknown

Crash in Work Zone: 1 Before the First Work Zone Warning Sign 2 Advance Warning Area 3 Transition Area 4 Activity Area 5 Termination Area

Type of Work Zone: 1 Lane Closure 2 Lane Shift/Crossover 3 Work on Shoulder or Median 4 Intermittent or Moving Work 77 Other, Explain in Narrative

Workers in Work Zone: 1 No 2 Yes 88 Unknown

Law Enforcement in Work Zone: 1 No 2 Officer Present 3 Law Enforcement Vehicle Only Present

WITNESSES

NAME	ADDRESS	CITY & STATE	ZIP CODE

NON VEHICLE PROPERTY DAMAGE

VEHICLE #	PERSON #	PROPERTY DAMAGE – OTHER THAN VEHICLE	EST. AMOUNT	OWNER'S NAME ☐ (Check if Business)	ADDRESS	CITY & STATE	ZIP CODE

JUN 0 2 2014

VEHICLE # 1	Check if Commercial	REPORTING AGENCY CASE NUMBER	ASMV CRASH REPORT NUMBER
		14-08025	8411L10969

1 Vehicle in Transport 2 Parked Motor Vehicle 3 Working Vehicle	VEHICLE LICENSE NUMBER	STATE	REGISTRATION EXPIRES	Check if Permanent Registration	VIN
1	751VDQ	FL	06/01/2015		KNDJA7233V5537876

Hit and Run 1 No 2 Yes 88 Unknown	YEAR	MAKE	MODEL	STYLE	COLOR	DAMAGE 1 Disabling 2 Functional 4 Minor 88 Unknown	EST AMOUNT
1	1997	KIA		UV	WHI	2	1200

INSURANCE COMPANY	INSURANCE POLICY NUMBER	Towed due to Damage: 1 No 2 Yes	VEHICLE REMOVED BY	1. Rotation 2. Owner Request 3. Driver 4. Other, Explain in Narrative
MGA INSURANCE COMPANY, INC.	12MGEP011022704	1	TERRY SARMIENTO	3

NAME OF VEHICLE OWNER ☐ (Check if Business)			CURRENT ADDRESS	CITY & STATE		ZIP CODE
TERRY	ELIZABEH	SARMIENTO	4523 OAK TERRACE DR	GREENACRES	FL	33463

Trailer #	LICENSE NUMBER	STATE	REGISTRATION EXPIRES	Check if Permanent Registration	VIN	YEAR	MAKE	LENGTH	AXLES
1									
Trailer #	LICENSE NUMBER	STATE	REGISTRATION EXPIRES	Check if Permanent Registration	VIN	YEAR	MAKE	LENGTH	AXLES
2									

VEHICLE TRAVELING	N	S	E	W	Off-Road	Unknown	ON STREET, ROAD, HIGHWAY	AT EST SPEED	POSTED SPEED	TOTAL LANES
	X						PARKING LOT OF 4849 S MILITARY TRL			

HAZ. MAT. RELEASED 1 No 2 Yes 88 Unknown	HAZ. MAT. PLACARD 1 No 2 Yes 88 Unknown	HAZ. MAT. NUMBER	HAZ. MAT. CLASS

Area of Initial Impact / Most Damaged Area

18 Undercarriage
19 Cranium
20 Windshield
21 Trailer

MOTOR CARRIER NAME	US DOT NUMBER

MOTOR CARRIER ADDRESS	CITY & STATE	ZIP CODE	PHONE NUMBER

Vehicle Body Type
1 Passenger Car, 2 Passenger Van, 3 Pickup, 7 Motor Home, 8 Bus, 11 Motorcycle, 12 Moped, 13 All Terrain Vehicle (ATV), 15 Low Speed Vehicle, 16 (Sport) Utility Vehicle, 17 Cargo Van (10,000 lbs (4,536 kg) or less), 18 Motor Coach, 19 Other Light Trucks (10,000 lbs (4,536 kg) or less), 20 Medium/Heavy Trucks (more than 10,000 lbs (4,536 kg)), 21 Farm Labor Vehicle, 77 Other, Explain in Narrative, 88 Unknown

Trafficway
1 Two-Way, Not Divided, 2 Two-Way, Not Divided, with a Continuous Left Turn Lane, 3 Two-Way, Divided, Unprotected (painted >4 feet) Median, 4 Two-Way, Divided, Positive Median Barrier, 5 One-Way Trafficway, 88 Unknown

Commercial Motor Vehicle Configuration
1 Vehicle 10,000 lbs or less Placarded for Hazardous Materials, 2 Single-Unit Truck (2-axle and GVWR more than 10,000 lbs (4,536 kg)), 3 Single-Unit Truck (3 or more axles), 4 Truck Pulling Trailer(s), 5 Truck Tractor (bobtail), 6 Truck Tractor/Semi-Trailer, 7 Truck Tractor/Double Truck, 8 Tractor/Triple, 9 Truck more than 10,000 lbs (4,536 kg), Cannot Classify, 10 Bus/Large Van (>15 seats for 9-15 occupants, including driver), 11 Bus (>15 seats for more than 15 occupants, including driver), 77 Other, Explain in Narrative, 88 Unknown

Trailer Type
TRAILER 1 / TRAILER 2
1 Single Semi Trailer, 2 Tandem Semi Trailer, 3 Tank Trailer, 4 Saddle Mount/Trailer, 5 Boat Trailer, 6 Utility Trailer, 7 House Trailer, 8 Pole Trailer, 9 Towed Vehicle, 10 Auto Transport, 77 Other, Explain in Narrative, 88 Unknown

Cargo Body Type
1 No Cargo, 2 Bus, 3 Van/Enclosed Box, 4 Hopper, 5 Pole-Trailer, 6 Cargo Tank, 7 Flatbed, 8 Dump, 9 Concrete Mixer, 10 Auto Transport, 11 Garbage/Refuse, 12 Log, 13 Intermodal Container Chassis, 14 Vehicle Towing Another Vehicle, 15 Not Applicable (vehicle 10,000 lbs (4,536kg) or less not displaying HM placard), 77 Other, Explain in Narrative, 88 Unknown

Comm/Non-Commercial
1 Interstate Carrier, 2 Intrastate Carrier, 3 Not in Commerce/Government, 4 Not in Commerce/Other Truck

Comm GVWR/GCWR
1 10,000 lbs (4,536 kg) or less, 2 10,001-26,000 lbs (4,536-11,793 kg), 3 More than 26,000 lbs (11,793 kg), 4 Not Applicable

Most Harmful Event

Non-Collision
1 Overturn/Rollover, 2 Fire/Explosion, 3 Immersion, 4 Jackknife, 5 Cargo/Equipment Loss or Shift, 6 Fell/Jumped From Motor Vehicle, 7 Thrown or Falling Object, 8 Ran Into Water/Canal, 9 Other Non-Collision

Collision with Non-Fixed Object
10 Pedestrian, 11 Pedalcycle, 12 Railway Vehicle (train, engine), 13 Animal, 14 Motor Vehicle in Transport, 15 Parked Motor Vehicle, 16 Work Zone/Maintenance Equipment, 17 Struck By Falling, Shifting Cargo or Anything Set in Motion by Motor Vehicle, 18 Other Non-Fixed Object

Collision Fixed Object
19 Impact Attenuator/Crash Cushion, 20 Bridge Overhead Structure, 21 Bridge Pier or Support, 22 Bridge Rail, 23 Culvert, 24 Curb, 25 Ditch, 26 Embankment, 27 Guardrail Face, 28 Guardrail End, 29 Cable Barrier, 30 Concrete Traffic Barrier, 31 Other Traffic Barrier, 32 Tree (standing), 33 Utility Pole/Light Support, 34 Traffic Sign Support, 35 Traffic Signal Support, 36 Other Post, Pole, or Support, 37 Fence, 38 Mailbox, 39 Other Fixed Object (wall, building, tunnel, etc.)

Emergency Vehicle Use
1 No, 2 Yes, 88 Unknown

Sequence of Events
1st, 2nd, 3rd, 4th
(40-46 Sequence of Events only)
40 Equipment Failure (blown tire, brake failure, etc.), 41 Separation of Units, 42 Ran Off Roadway, Right, 43 Ran Off Roadway, Left, 44 Cross Median, 45 Cross Centerline, 46 Downhill Runaway

Vehicle Maneuver Action
1 Straight Ahead, 2 Turning Left, 3 Backing, 4 Turning Right, 5 Changing Lanes, 6 Parked, 7 Making U-Turn, 8 Overtaking/Passing, 13 Stopped in Traffic, 14 Slowing, 15 Negotiating a Curve, 16 Leaving Traffic Lane, 17 Entering Traffic Lane, 77 Other, Explain in Narrative, 88 Unknown

Traffic Control Device For This Vehicle
1 No Controls, 4 School Zone Sign/Device, 5 Traffic Control Signal, 6 Stop Sign, 7 Yield Sign, 8 Flashing Signal, 9 Railway Crossing Device, 10 Person (including Flagman, Officer, Guard etc.), 13 Warning Sign, 77 Other, Explain in Narrative, 88 Unknown

Vehicle Defects
1 None, 2 Brakes, 3 Tires, 4 Lights (head, signal, tail), 5 Steering, 7 Wipers, 9 Exhaust System, 10 Body, Doors, 11 Power Train, 12 Suspension, 13 Wheels, 14 Windows/Windshield, 15 Mirrors, 16 Truck Coupling/Trailer Hitch/Safety Chains, 77 Other, Explain in Narrative, 88 Unknown

Roadway Grade
1 Level, 2 Hillcrest, 3 Uphill, 4 Downhill, 5 Sag (bottom)

Roadway Alignment
1 Straight, 2 Curve Right, 3 Curve Left

Special Function of Motor Vehicle
1 No Special Function, 2 Farm Vehicle, 3 Police, 7 Taxi, 8 Military, 9 Ambulance, 10 Fire Truck, 11 Farm Labor Transport, 12 School Bus, 13 Transit/Commuter Bus, 14 Intercity Bus, 15 Charter/Tour Bus, 16 Shuttle Bus, 17 Farm Labor Bus, 88 Unknown

VIOLATIONS

PERSON #	NAME OF VIOLATOR	FL STATUTE NUMBER	CHARGE	CITATION NUMBER
PERSON #	NAME OF VIOLATOR	FL STATUTE NUMBER	CHARGE	CITATION NUMBER
PERSON #	NAME OF VIOLATOR	FL STATUTE NUMBER	CHARGE	CITATION NUMBER

PERSON # 1 | REPORTING AGENCY CASE NUMBER 14-08025 | DAVID CRASH REPORT NUMBER 8411459169

1 Driver 2 Non-Motorist 3 Passenger: 1 | VEHICLE # 1 | NAME: TERRY ELIZABEH SARMIENTO | PHONE NUMBER 561-603-6169 | Check if Recommend Driver Re-exam

CURRENT ADDRESS (Number and Street): 4523 OAK TERRACE DR | CITY & STATE: GREENACRES | ZIP CODE: FL 33463

DATE OF BIRTH: 11/19/1960 | SEX (1 Male 2 Female 88 Unknown): 2 | DRIVER LICENSE NUMBER: S655805609195 | STATE: FL | EXPIRES: 11/19/2016 | INJURY SEVERITY (INJ) (1 None 2 Possible 3 Non-Incapacitating 4 Incapacitating 5 Fatal (within 30 days) 6 Non-Traffic Fatality):

DRIVER

DL Type (1 A 2 B 3 C 4 D/Chauffeur 5 E/Operator 6 E/Oper - Rest 7 None):

Required Endorsements (1 Yes 2 No 3 No Req. Endorsement):

Driver Distracted By (1 Not Distracted 2 Electronic Communication Devices (cell phone, etc.) 3 Other Electronic Device (navigation device, DVD player) 4 Other Inside the Vehicle (explain in narrative) 5 External Distraction (outside the vehicle, explain in narrative) 6 Texting 7 Inattentive 88 Unknown):

Driver Vision Obstructions (1 Vision Not Obscured 2 Inclement Weather 3 Parked/Stopped Vehicle 4 Trees/Crops/Bushes 5 Load on Vehicle 6 Building/Fixed Object 7 Signs/Billboards 8 Fog 9 Smoke 10 Glare 77 All Other, Explain in Narrative):

Driver's Actions at Time of Crash (1st / 2nd / 3rd / 4th):
1 No Contributing Action 2 Operated MV in Careless or Negligent Manner 3 Failed to Yield Right-of-Way 4 Improper Backing 5 Improper Turn 10 Followed too Closely 11 Ran Red Light 12 Drove too Fast for Conditions 13 Ran Stop Sign 25 Improper Passing 27 Exceeded Posted Speed 21 Wrong Side or Wrong Way 25 Failed to Keep in Proper Lane 26 Ran off Roadway 27 Disregarded other Traffic Sign 28 Disregarded Other Road Markings 29 Over-Correcting/Over-Steering 30 Swerved or Avoided, Due to Wind, Slippery Surface, MV, Object, Non-Motorist in Roadway, etc. 31 Operated MV in Erratic, Reckless or Aggressive Manner 77 Other Contributing Action

Condition At Time of Crash (1 Apparently Normal 3 Asleep or Fatigued 5 Ill (sick) or Fainted 6 Seizure, Epilepsy, Blackout 7 Physically Impaired 8 Emotional (depression, angry, disturbed, etc.) 9 Under the Influence of Medications/Drugs/Alcohol 77 Other, Explain in Narrative 88 Unknown):

DRIVER OR PASSENGER

Motor Vehicle Seating Position: LOCATION: SEAT ROW OTHER (LOC)

Seat (1 Left 2 Middle 3 Right 77 Other (explain in narrative) 88 Unknown):
Row (1 Front 2 Second 3 Third 4 Fourth 77 Other Row 88 Unknown):
Other (1 Not Applicable 2 Sleeper Section of Truck Cab 3 Other Enclosed Cargo Area 4 Unenclosed Cargo Area 5 Trailing Unit 6 Riding on Motor Vehicle Exterior (non-trailing unit) 88 Unknown):

Ejection (EJECT) (1 Not Ejected 2 Ejected, Totally 3 Ejected, Partially 4 Not Applicable 88 Unknown):

Helmet Use (HU) (1 DOT-Compliant Motorcycle Helmet 2 Other Helmet 3 No Helmet):

Eye Protection (EP) (1 Yes 2 No 3 Not Applicable):

Air Bag Deployed (ABD) (1 Not Applicable 2 Not Deployed 3 Deployed-Front 4 Deployed-Side 5 Deployed-Other (knee, air belt, etc.) 6 Deployed-Combination 7 Deployed-Curtain 88 Deployment Unknown):

Restraint Systems (RS) (1 Not Applicable 2 None Used - Motor Vehicle Occupant 3 Shoulder and Lap Belt Used 4 Shoulder Belt Only Used 5 Lap Belt Only Used 6 Restraint Used - Type Unknown 7 Child Restraint System - Forward Facing 8 Child Restraint System - Rear Facing 9 Booster Seat 10 Child Restraint Type Unknown 77 Other, Explain in Narrative):

NON-MOTORIST

Non-Motorist Description (1 Pedestrian 2 Other Pedestrian (wheelchair, person in a building, skater, pedestrian conveyance, etc.) 3 Bicyclist 4 Other Cyclist 5 Occupant of Motor Vehicle Not in Transport (parked, etc.) 6 Occupant of a Non-Motor Vehicle Transportation Device 7 Unknown Type of Non-Motorist):

Non-Motorist Location At Time of Crash (1 Intersection - Marked Crosswalk 2 Intersection - Unmarked Crosswalk 3 Intersection - Other 4 Midblock - Marked Crosswalk 5 Travel Lane - Other Location 6 Bicycle Lane 7 Shoulder/Roadside 8 Sidewalk 9 Median/Crossing Island 10 Driveway Access 11 Shared-Use Path or Trail 12 Non-Trafficway Area 77 Other, Explain in Narrative 88 Unknown):

Non-Motorist Actions/Circumstances (1st / 2nd):
1 No Improper Action 2 Dart/Dash 3 Failure to Yield Right-of-Way 4 Failure to Obey Traffic Signs, Signals, or Officer 5 In Roadway Improperly (standing, lying, working, playing) 6 Disabled Vehicle Related (working on, pushing, leaving/approaching) 7 Entering/Exiting Parked/Standing Vehicle 8 Inattentive (talking, eating, etc) 9 Not Visible (dark clothing, no lighting, etc.) 10 Improper Turn/Merge 11 Improper Passing 12 Wrong-Way Riding or Walking 77 Other, Explain in Narrative 88 Unknown

Action Prior to Crash (1 Crossing Roadway 2 Waiting to Cross Roadway 3 Walking/Cycling Along Roadway with Traffic (in or adjacent to travel lane) 4 Walking/Cycling Along Roadway Against Traffic (in or adjacent to travel lane) 5 Walking/Cycling on Sidewalk 6 In Roadway - Other (working, playing, etc.) 7 Adjacent to Roadway (e.g., shoulder, median) 8 Going to or from School (K-12) 9 Working in Trafficway (incident response) 10 None 77 Other, Explain in Narrative 88 Unknown):

Safety Equipment (1 None 2 Helmet 3 Protective Pads Used (elbows, knees, shins, etc.) 4 Reflective Clothing (jacket, backpack, etc.) 5 Lighting 6 Not Applicable 77 Other, Explain in Narrative 88 Unknown):

ALCOHOL/DRUG/EMS

SUSPECTED ALCOHOL USE (1 No 2 Yes 88 Unknown) | ALCOHOL TESTED (1 Test Not Given 2 Test Refused 3 Test Given 88 Unknown, if Tested) | ALCOHOL TEST TYPE (1 Blood 2 Breath 3 Urine 77 Other, Explain in Narrative) | ALCOHOL TEST RESULT (1 Pending 2 Completed 88 Unknown) | BAC | SUSPECTED DRUG USE (1 No 2 Yes 88 Unknown) | DRUG TESTED (1 Test Not Given 2 Test Refused 3 Test Given 88 Unknown, if Tested) | DRUG TEST TYPE (1 Blood 2 Urine 77 Other, Explain in Narrative) | DRUG TEST RESULT (1 Positive 2 Negative 3 Pending 88 Unknown)

SOURCE OF TRANSPORT TO MEDICAL FACILITY (1 Not Transported 2 EMS 3 Law Enforcement 77 Other, Explain in Narrative 88 Unknown) | EMS AGENCY NAME OR ID | EMS RUN NUMBER | MEDICAL FACILITY TRANSPORTED TO

ADDITIONAL PASSENGERS

PERSON #	VEHICLE #	NAME	DATE OF BIRTH	INJ	SEX	LOC. S	R	O	EJECT	HU	EP	ABD	RS

CURRENT ADDRESS (Number and Street) | CITY & STATE | ZIP CODE

SOURCE OF TRANSPORT TO MEDICAL FACILITY (1 Not Transported 2 EMS 3 Law Enforcement 77 Other, Explain in Narrative 88 Unknown) | EMS AGENCY NAME OR ID | EMS RUN NUMBER | MEDICAL FACILITY TRANSPORTED TO

PERSON #	VEHICLE #	NAME	DATE OF BIRTH	INJ	SEX	LOC. S	R	O	EJECT	HU	EP	ABD	RS

CURRENT ADDRESS (Number and Street) | CITY & STATE | ZIP CODE

SOURCE OF TRANSPORT TO MEDICAL FACILITY (1 Not Transported 2 EMS 3 Law Enforcement 77 Other, Explain in Narrative 88 Unknown) | EMS AGENCY NAME OR ID | EMS RUN NUMBER | MEDICAL FACILITY TRANSPORTED TO

[redacted]

VEHICLE # 2 **Check if Commercial** | REPORTING AGENCY CASE NUMBER: 14-08025 | HSMV CRASH REPORT NUMBER: [illegible]

1 Vehicle in Transport, 2 Parked Motor Vehicle, 3 Working Vehicle: 1 | VEHICLE LICENSE NUMBER: 407NXM | STATE: FL | REGISTRATION EXPIRES: 11/01/2014 | Check if Permanent Registration: | VIN: 1ZVHT84N865104257

Hit and Run (1 No, 2 Yes, 88 Unknown): 1 | YEAR: 2006 | MAKE: FORD | MODEL: | STYLE: 2D | COLOR: WHI | DAMAGE (1 Disabling, 2 Functional, 3 None, 4 Minor, 88 Unknown): 2 | EST. AMOUNT: 1200

INSURANCE COMPANY: STATE FARM MUTUAL AUTOMOBILE INSURANC | INSURANCE POLICY NUMBER: C364753594 | Towed due to Damage (1 No, 2 Yes): 1 | VEHICLE REMOVED BY: [redacted] | (1. Rotation, 2. Owner Request, 3. Driver, 4. Other, Explain in Narrative): 3

NAME OF VEHICLE OWNER ☐ (Check if Business): [redacted] A [redacted] | CURRENT ADDRESS: 3328 OVERLOOK PLACE | CITY & STATE: LANTANA FL | ZIP CODE: 33462

Trailer #	LICENSE NUMBER	STATE	REGISTRATION EXPIRES	Check if Permanent Registration	VIN	YEAR	MAKE	LENGTH	AXLES
1									
2									

VEHICLE TRAVELING: N ☒ S ☐ E ☐ W ☐ Off-Road ☐ Unknown ☐ | ON STREET, ROAD, HIGHWAY: PARKING LOT OF 4849 S MILITARY TRL | AT EST SPEED | POSTED SPEED | TOTAL LANES

HAZ. MAT RELEASED (1 No, 2 Yes, 88 Unknown) | HAZ. MAT. PLACARD (1 No, 2 Yes, 88 Unknown) | HAZ. MAT NUMBER | HAZ. MAT CLASS

Area of Initial Impact / Most Damaged Area: 18 Undercarriage, 19 Overturn, 20 Windshield, 21 Trailer

MOTOR CARRIER NAME | US DOT NUMBER | MOTOR CARRIER ADDRESS | CITY & STATE | ZIP CODE | PHONE NUMBER

Vehicle Body Type: 1 Passenger Car, 2 Passenger Van, 3 Pickup, 7 Motor Home, 8 Bus, 11 Motorcycle, 12 Moped, 13 All Terrain Vehicle (ATV), 15 Low Speed Vehicle, 16 (Sport) Utility Vehicle, 17 Cargo Van (10,000 lbs (4,536 kg) or less), 18 Motor Coach, 19 Other Light Trucks (10,000 lbs (4,536 kg) or less), 20 Medium/Heavy Trucks (more than 10,000 lbs (4,536 kg)), 21 Farm Labor Vehicle, 77 Other, Explain in Narrative, 88 Unknown

Trafficway: 1 Two-Way, Not Divided; 2 Two-Way, Not Divided, with a Continuous Left Turn Lane; 3 Two-Way, Divided, Unprotected (painted >4 feet) Median; 4 Two-Way, Divided, Positive Median Barrier; 5 One-Way Trafficway; 88 Unknown

Commercial Motor Vehicle Configuration: 1 Vehicle 10,000 lbs or less Placarded for Hazardous Materials; 2 Single-Unit Truck (2-axle and GVWR more than 10,000 lbs (4,536 kg)); 3 Single-Unit Truck (3 or more axles); 4 Truck Pulling Trailer(s); 5 Truck Tractor (bobtail); 6 Truck Tractor/Semi-Trailer; 7 Truck Tractor/Double Truck; 8 Tractor/Triple; 9 Truck more than 10,000 lbs (4,536 kg), Cannot Classify; 10 Bus/Large Van (seats for 9-15 occupants, including driver); 11 Bus (seats for more than 15 occupants, including driver); 77 Other, Explain in Narrative; 88 Unknown

Trailer Type: TRAILER 1 | TRAILER 2 — 1 Single Semi Trailer; 2 Tandem Semi Trailer; 3 Tank Trailer; 4 Saddle Mount/Trailer; 5 Boat Trailer; 6 Utility Trailer; 7 House Trailer; 8 Pole Trailer; 9 Towed Vehicle; 10 Auto Transport; 77 Other, Explain in Narrative; 88 Unknown

Comm/Non-Commercial: 1 Interstate Carrier; 2 Intrastate Carrier; 3 Not in Commerce/Government; 4 Not in Commerce/Other Truck

Comm GVWR/GCWR: 1 10,000 lbs (4,536 kg) or less; 2 10,001-26,000 lbs (4,536-11,793 kg); 3 More than 26,000 lbs (11,793 kg); 4 Not Applicable

Cargo Body Type: 1 No Cargo; 2 Bus; 3 Van/Enclosed Box; 4 Hopper; 5 Pole-Trailer; 6 Cargo Tank; 7 Flatbed; 8 Dump; 9 Concrete Mixer; 10 Auto Transport; 11 Garbage/Refuse; 12 Log; 13 Intermodal Container Chassis; 14 Vehicle Towing Another Vehicle; 15 Not Applicable (vehicle 10,000 lbs (4,536 kg) or less not displaying HM placard); 77 Other, Explain in Narrative; 88 Unknown

Most Harmful Event / **Non-Collision**: 1 Overturn/Rollover; 2 Fire/Explosion; 3 Immersion; 4 Jackknife; 5 Cargo/Equipment Loss or Shift; 6 Fell/Jumped From Motor Vehicle; 7 Thrown or Falling Object; 8 Ran Into Water/Canal; 9 Other Non-Collision

Sequence of Events: 1st, 2nd, 3rd, 4th — (40-46 Sequence of Events only) 40 Equipment Failure (blown tire, brake failure, etc.); 41 Separation of Units; 42 Ran Off Roadway, Right; 43 Ran Off Roadway, Left; 44 Cross Median; 45 Cross Centerline; 46 Downhill Runaway

Collision with Non-Fixed Object: 10 Pedestrian; 11 Pedalcycle; 12 Railway Vehicle (train, engine); 13 Animal; 14 Motor Vehicle In Transport; 15 Parked Motor Vehicle; 16 Work Zone/Maintenance Equipment; 17 Struck By Falling, Shifting Cargo or Anything Set in Motion by Motor Vehicle; 18 Other Non-Fixed Object

Collision Fixed Object: 19 Impact Attenuator/Crash Cushion; 20 Bridge Overhead Structure; 21 Bridge Pier or Support; 22 Bridge Rail; 23 Culvert; 24 Curb; 25 Ditch; 26 Embankment; 27 Guardrail Face; 28 Guardrail End; 29 Cable Barrier; 30 Concrete Traffic Barrier; 31 Other Traffic Barrier; 32 Tree (standing); 33 Utility Pole/Light Support; 34 Traffic Sign Support; 35 Traffic Signal Support; 36 Other Post, Pole, or Support; 37 Fence; 38 Mailbox; 39 Other Fixed Object (wall, building, tunnel, etc.)

Emergency Vehicle Use: 1 No; 2 Yes; 88 Unknown

Roadway Grade: 1 Level; 2 Hillcrest; 3 Uphill; 4 Downhill; 5 Sag (bottom)

Roadway Alignment: 1 Straight; 2 Curve Right; 3 Curve Left

Vehicle Maneuver Action: 1 Straight Ahead; 2 Turning Left; 3 Backing; 4 Turning Right; 5 Changing Lanes; 6 Parked; 7 Making U-Turn; 8 Overtaking/Passing; 9 Stopped in Traffic; 10 Slowing; 11 Negotiating a Curve; 12 Leaving Traffic Lane; 13 Entering Traffic Lane; 77 Other, Explain in Narrative; 88 Unknown

Traffic Control Device For This Vehicle: 1 No Controls; 2 School Zone Sign/Device; 3 Traffic Control Signal; 4 Stop Sign; 5 Yield Sign; 6 Flashing Signal; 7 Railway Crossing Device; 8 Person (including Flagman, Officer, Guard, etc.); 9 Warning Sign; 77 Other, Explain in Narrative; 88 Unknown

Vehicle Defects: 1 None; 2 Brakes; 3 Tires; 4 Lights (head, signal, tail); 5 Steering; 6 Wipers; 7 Exhaust System; 8 Body, Doors; 9 Power Train; 10 Suspension; 11 Wheels; 12 Windows/Windshield; 13 Mirrors; 14 Truck Coupling/Trailer Hitch/Safety Chains; 77 Other, Explain in Narrative; 88 Unknown

Special Function of Motor Vehicle: 1 No Special Function; 2 Farm Vehicle; 3 Police; 4 Taxi; 5 Military; 6 Ambulance; 7 Fire Truck; 8 Farm Labor Transport; 9 School Bus; 10 Transit/Commuter Bus; 11 Intercity Bus; 12 Charter/Tour Bus; 13 Shuttle Bus; 14 Farm Labor Bus; 88 Unknown

VIOLATIONS

PERSON #	NAME OF VIOLATOR	FL STATUTE NUMBER	CHARGE	CITATION NUMBER
PERSON #	NAME OF VIOLATOR	FL STATUTE NUMBER	CHARGE	CITATION NUMBER
PERSON #	NAME OF VIOLATOR	FL STATUTE NUMBER	CHARGE	CITATION NUMBER

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PERSON # 2 | REPORTING AGENCY CASE NUMBER: 14-08025 | FLHSMV CRASH REPORT NUMBER: 8[illegible]4D9L69

1 Driver 2 Non-Motorist 3 Passenger: 1 | VEHICLE #: 2 | NAME: [redacted] A [redacted] | PHONE NUMBER: 347-739-3300 | Check if Recommend Driver Re-exam:

CURRENT ADDRESS (Number and Street): 3328 LAKE OVERLOOK PLACE | CITY & STATE: LAKE WORTH | ZIP CODE: FL 33462

DATE OF BIRTH: 11/01/1963 | SEX: 1 Male 2 Female 88 Unknown: 1 | DRIVER LICENSE NUMBER: M522541634010 | STATE: FL | EXPIRES: 11/01/2019 | INJURY SEVERITY (INJ): 1 None 2 Possible 3 Non-Incapacitating 4 Incapacitating 5 Fatal (within 30 days) 6 Non-Traffic Fatality

DRIVER

DL Type: 1 A 2 B 3 C 4 D/Chauffeur 5 E/Operator 6 E/Oper - Rest 7 None

Required Endorsements: 1 Yes 2 No 3 No Req. Endorsement

Driver Distracted By: 1 Not Distracted 2 Electronic Communication Devices (cell phone, etc.) 3 Other Electronic Device (navigation device, DVD player) 4 Other Inside the Vehicle (explain in narrative) 5 External Distraction (outside the vehicle, explain in narrative) 6 Texting 7 Inattentive 88 Unknown

Driver Vision Obstructions: 1 Vision Not Obscured 2 Inclement Weather 3 Parked/Stopped Vehicle 4 Trees/Crops/Bushes 5 Load on Vehicle 6 Building/Fixed Object 7 Signs/Billboards 8 Fog 9 Smoke 10 Glare 77 All Other, Explain in Narrative

Driver's Actions at Time of Crash (1st / 2nd / 3rd / 4th): 1 No Contributing Action 2 Operated MV in Careless or Negligent Manner 3 Failed to Yield Right-of-Way 4 Improper Backing 6 Improper Turn 10 Followed too Closely 11 Ran Red Light 12 Drove too Fast for Conditions 13 Ran Stop Sign 15 Improper Passing 17 Exceeded Posted Speed 21 Wrong Side or Wrong Way 25 Failed to Keep in Proper Lane 26 Ran off Roadway 27 Disregarded other Traffic Sign 28 Disregarded Other Road Markings 29 Over-Correcting/Over-Steering 30 Swerved or Avoided - Due to Wind, Slippery Surface, MV, Object, Non-Motorist in Roadway, etc. 31 Operated MV in Erratic, Reckless or Aggressive Manner 77 Other Contributing Action

Condition At Time of Crash: 1 Apparently Normal 3 Asleep or Fatigued 5 Ill (sick) or Fainted 6 Seizure, Epilepsy, Blackout 7 Physically Impaired 8 Emotional (depression, angry, disturbed, etc.) 9 Under the Influence of Medications/Drugs/Alcohol 77 Other, Explain in Narrative 88 Unknown

DRIVER OR PASSENGER

Motor Vehicle Seating Position: LOCATION: SEAT ROW OTHER (LOC)

Seat: 1 Left 2 Middle 3 Right 77 Other (explain in narrative) 88 Unknown

Row: 1 Front 2 Second 3 Third 4 Fourth 77 Other Row 88 Unknown

Other: 1 Not Applicable 2 Sleeper Section of Truck Cab 3 Other Enclosed Cargo Area 4 Unenclosed Cargo Area 5 Trailing Unit 6 Riding on Motor Vehicle Exterior (non-trailing unit) 88 Unknown

Ejection (EJECT): 1 Not Ejected 2 Ejected, Totally 3 Ejected, Partially 4 Not Applicable 88 Unknown

Helmet Use (HU): 1 DOT-Compliant Motorcycle Helmet 2 Other Helmet 3 No Helmet

Eye Protection (EP): 1 Yes 2 No 3 Not Applicable

Air Bag Deployed (ABD): 1 Not Applicable 2 Not Deployed 3 Deployed-Front 4 Deployed-Side 5 Deployed-Other (knee, air belt, etc.) 6 Deployed-Combination 7 Deployed-Curtain 88 Deployment Unknown

Restraint Systems (RS): 1 Not Applicable 2 None Used - Motor Vehicle Occupant 3 Shoulder and Lap Belt Used 4 Shoulder Belt Only Used 5 Lap Belt Only Used 6 Restraint Used - Type Unknown 7 Child Restraint System - Forward Facing 8 Child Restraint System - Rear Facing 9 Booster Seat 10 Child Restraint Type Unknown 77 Other, Explain in Narrative

NON-MOTORIST

Non-Motorist Description: 1 Pedestrian 2 Other Pedestrian (wheelchair, person in a building, skater, pedestrian conveyance, etc.) 3 Bicyclist 4 Other Cyclist 5 Occupant of Motor Vehicle Not in Transport (parked, etc.) 6 Occupant of a Non-Motor Vehicle Transportation Device 7 Unknown Type of Non-Motorist

Non-Motorist Location At Time of Crash: 1 Intersection - Marked Crosswalk 2 Intersection - Unmarked Crosswalk 3 Intersection - Other 4 Midblock - Marked Crosswalk 5 Travel Lane - Other Location 6 Bicycle Lane 7 Shoulder/Roadside 8 Sidewalk 9 Median/Crossing Island 10 Driveway Access 11 Shared-Use Path or Trail 12 Non-Trafficway Area 77 Other, Explain in Narrative 88 Unknown

Action Prior to Crash: 1 Crossing Roadway 2 Waiting to Cross Roadway 3 Walking/Cycling Along Roadway with Traffic (in or adjacent to travel lane) 4 Walking/Cycling Along Roadway Against Traffic (in or adjacent to travel lane) 5 Walking/Cycling on Sidewalk 6 In Roadway – Other (working, playing, etc.) 7 Adjacent to Roadway (e.g., shoulder, median) 8 Going to or from School (K-12) 9 Working in Trafficway (incident response) 10 None 77 Other, Explain in Narrative 88 Unknown

Non-Motorist Actions/Circumstances (1st / 2nd): 1 No Improper Action 2 Dart/Dash 3 Failure to Yield Right-of-Way 4 Failure to Obey Traffic Signs, Signals, or Officer 5 In Roadway Improperly (standing, lying, working, playing) 6 Disabled Vehicle Related (working on, pushing, leaving/approaching) 7 Entering/Exiting Parked/Standing Vehicle 8 Inattentive (talking, eating, etc) 9 Not Visible (dark clothing, no lighting, etc.) 10 Improper Turn/Merge 11 Improper Passing 12 Wrong-Way Riding or Walking 77 Other, Explain in Narrative 88 Unknown

Safety Equipment: 1 None 2 Helmet 3 Protective Pads Used (elbows, knees, shins, etc.) 4 Reflective Clothing (jacket, backpack, etc.) 5 Lighting 6 Not Applicable 77 Other, Explain in Narrative 88 Unknown

ALCOHOL/DRUG/EMS

SUSPECTED ALCOHOL USE: 1 No 2 Yes 88 Unknown

ALCOHOL TESTED: 1 Test Not Given 2 Test Refused 3 Test Given 88 Unknown, If Tested

ALCOHOL TEST TYPE: 1 Blood 2 Breath 3 Urine 77 Other, Explain in Narrative

ALCOHOL TEST RESULT: 1 Pending 2 Completed 88 Unknown | BAC

SUSPECTED DRUG USE: 1 No 2 Yes 88 Unknown

DRUG TESTED: 1 Test Not Given 2 Test Refused 3 Test Given 88 Unknown, If Tested

DRUG TEST TYPE: 1 Blood 2 Urine 77 Other, Explain in Narrative

DRUG TEST RESULT: 1 Positive 2 Negative 3 Pending 88 Unknown

SOURCE OF TRANSPORT TO MEDICAL FACILITY: 1 Not Transported 2 EMS 3 Law Enforcement 77 Other, Explain in Narrative 88 Unknown | EMS AGENCY NAME OR ID | EMS RUN NUMBER | MEDICAL FACILITY TRANSPORTED TO

ADDITIONAL PASSENGERS

PERSON # | VEHICLE # | NAME | DATE OF BIRTH | INJ | SEX | LOC. S | R | O | EJECT | HU | EP | ABD | RS

CURRENT ADDRESS (Number and Street) | CITY & STATE | ZIP CODE

SOURCE OF TRANSPORT TO MEDICAL FACILITY: 1 Not Transported 2 EMS 3 Law Enforcement 77 Other, Explain in Narrative 88 Unknown | EMS AGENCY NAME OR ID | EMS RUN NUMBER | MEDICAL FACILITY TRANSPORTED TO

PERSON # | VEHICLE # | NAME | DATE OF BIRTH | INJ | SEX | LOC. S | R | O | EJECT | HU | EP | ABD | RS

CURRENT ADDRESS (Number and Street) | CITY & STATE | ZIP CODE

SOURCE OF TRANSPORT TO MEDICAL FACILITY: 1 Not Transported 2 EMS 3 Law Enforcement 77 Other, Explain in Narrative 88 Unknown | EMS AGENCY NAME OR ID | EMS RUN NUMBER | MEDICAL FACILITY TRANSPORTED TO

NARRATIVE

REPORTING AGENCY CASE NUMBER: 14-08025

FLORIDA CRASH REPORT NUMBER: 8647409169

V1 AND V2 WERE IN THE PARKING LOT OF 4849 S MILITARY TRL. BOTH WERE ATTEMPTING TO THE EXIT THE PLAZA ON THE NORTHEASTERN ENTRANCE/EXIT. V2 MOVED FORWARD IN ATTEMPTS TO GET CLOSER TO THE RODAWAY. V1 WAS BEHIND V2, AND UPON V2 STOPPED V1 STRUCK THE REAR DRIVER SIDE. THIS CAUSED DAMAGES TO BOTH VEHICLES. D2 COMPLAINED OF POSSIBLE SHOULDER INJURY. PALM BEACH FIRE RESCUE RESPONDED BUT D2 REFUSED TO BE TRANSPORTED TO THE HOSPITAL. NO OTHER INJURIES WERE REPORTED ON SCENE.

ADDITIONAL PASSENGERS

PERSON #	VEHICLE #	NAME	DATE OF BIRTH	INJ	SEX	LOC: S	R	O	EJECT	HU	EP	ABD	RS

CURRENT ADDRESS (Number and Street) | CITY & STATE | ZIP CODE

SOURCE OF TRANSPORT TO MEDICAL FACILITY (1 Not Transported, 2 EMS, 3 Law Enforcement, 77 Other, Explain in Narrative, 88 Unknown)	EMS AGENCY NAME OR ID	EMS RUN NUMBER	MEDICAL FACILITY TRANSPORTED TO

PERSON #	VEHICLE #	NAME	DATE OF BIRTH	INJ	SEX	LOC: S	R	O	EJECT	HU	EP	ABD	RS

CURRENT ADDRESS (Number and Street) | CITY & STATE | ZIP CODE

SOURCE OF TRANSPORT TO MEDICAL FACILITY (1 Not Transported, 2 EMS, 3 Law Enforcement, 77 Other, Explain in Narrative, 88 Unknown)	EMS AGENCY NAME OR ID	EMS RUN NUMBER	MEDICAL FACILITY TRANSPORTED TO

ADDITIONAL VIOLATIONS

PERSON #	NAME OF VIOLATOR	FL STATUTE NUMBER	CHARGE	CITATION NUMBER
PERSON #	NAME OF VIOLATOR	FL STATUTE NUMBER	CHARGE	CITATION NUMBER

REPORTING OFFICER

ID/BADGE NUMBER	RANK & NAME	DEPARTMENT	FHP	SO	PD	OTHER
1720	OFC D VARONE	GREENACRES POLICE DEPT	☐	☐	☒	☐

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MSP Recovery Law Firm

NOTICE OF LIEN

PERTAINING TO PAYMENTS MADE ON BEHALF OF A MEDICARE ADVANTAGE PLAN MEMBER

September 9, 2014

State Farm Insurance
Attn: Karen Renshaw
P.O. Box 106134
Atlanta, GA 30348
Fax #: 800-627-4023

RE: OUR FILE NO.:14-MSP-05846-FHCP
MEMBER NO.: 00000005271
OUR MEMBER/YOUR INSURER: [redacted]
DOB: 11/01/1963
DOA: 05/29/2014
TYPE OF LIEN/CLAIM: (MEDICARE / MEDICAID)
CLAIM #: 594M73505

To whom it may concern:

Please be advised that this firm represents MSP Recovery-FHCP, Inc. who is the assignee of all subrogation claims and/or claims whereby Florida Health Care Plus (FHCP) is deemed to be a secondary payor pursuant to 42 U.S.C. § 1395y(b)(3)(A). We are hereby placing you on notice that pursuant to my clients' rights as a Medicare Advantage Plan ("MA") and/or as a payor of Medicaid assigned obligee, our client has the same rights as would Medicare and/or Medicaid. Also, to the extent that FHCP has made payment for medical benefits, we hereby assert our rights as a Medicare assignee.

Accordingly, to the extent that you and/or your insured have available liability and/or medical payments coverage, we are hereby placing you on notice that FHCP is asserting a **LIEN** for all benefits paid and/or to be paid as it pertains to the above referenced member. Additionally, pursuant to42 U.S.C. § 1395y(b)(3)(A), all contractually required payments for medical expenses should be paid forthwith. Therefore, if Medical Payment and/or other coverage exists contractually, demand is hereby made that MSP Recovery-FHCP be compensated right away.

If you fail to respond within five (5) business days from the date of this letter, we will assume you are refusing coverage and/or are terminating the planholder's coverage. All payments to release any rights of FHCP must be made to MSP Recovery-FHCP, Inc. Please be advised that this letter shall place

MSP Recovery Law Firm

all parties involved that FHCP is hereby asserting a lien for all benefits paid or to be paid pursuant to42 U.S.C. § 1395y(b)(3)(A)as more fully described above.

Sincerely,

Frank C. Quesada

Frank C. Quesada, Esquire

T: 305-614-2222
F: 305-239-8870
E: recovery@msprecovery.com
W: www.msprecovery.com

MSP Recovery Law Firm

NOTICE OF LIEN

PERTAINING TO PAYMENTS MADE ON BEHALF OF A MEDICARE ADVANTAGE ("MA") PLAN MEMBER

September 9, 2014

State Farm Insurance
Attn: Karen Renshaw
P.O. Box 106134
Atlanta, GA 30348
Fax #: 800-627-4023

RE: OUR FILE NO.:14-MSP-05846-FHCP
MEMBER NO.: 00000005271
OUR MEMBER/YOUR INSURER: [redacted]
DOB: 11/01/1963
DOA: 05/29/2014
TYPE OF LIEN/CLAIM: (MEDICARE / MEDICAID)
CLAIM #: 594M73505

MSP Recovery Inc., as assignee of Florida Health Care Plus (FHCP), and herein serves formal notice of a Medicare Advantage PlusPlan ("MA") LIEN to all parties in this action.

The undersigned serves notice to all that FHCP asserts this MA LIENfor any and all payments made for medical services and/or supplies pursuant to an MA.

This LIENis being asserted pursuant to the Medicare Secondary Payer Act Section 1862(b)(2)(B)(ii) of the Social Security Act and/or Equitable Rights as provided by Florida Law. As a Secondary Payer, any contractually required payment(s) for medical services and/or supplies should be made to MSP Recovery as assignee of FHCP forthwith.
Sincerely,

Frank C. Quesada

Frank C. Quesada, Esquire

T: 305-614-2222
F: 305-239-8870
E: recovery@msprecovery.com
W: www.msprecovery.com

MSP Recovery Law Firm
Attorneys at Law
5000 SW 75TH Avenue, Suite 400
Miami, FL 33155

7010 1870 0003 3525 1287

Paul Robichaux
State Farm Mutual Automobile Insurance Company
PIP Demand Notice Unit
PO Box 106140
Atlanta, GA 30348

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Paul Robichaux
State Farm Mutual
Automobile Insurance Co.
PIP Demand Notice Unit
P.O. Box 106140
Atlanta, GA 30348

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☒ Yes

2. Article Number (Transfer from service label) 7010 1670 0003 3525 1287

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

MSP Recovery Law Firm

December 9, 2014

Paul Robichaux
State Farm Mutual Automobile
Insurance Company
PIP Demand Notice Unit
P.O. Box 106140
Atlanta, GA 30348

RE: OUR FILE NO.: 14-MSP-05846-FHCP
YOUR INSURED/ FHCP MEMBER NAME: [redacted]
DOA: 05/29/2014
YOUR CLAIM NO.: 594M73505
TYPE OF LIEN/CLAIM: MEDICARE/MEDICAID

DEMAND PURSUANT TO:
42 U.S.C. § 1395y(b)(3)(A) and
Florida Statute § 627.736

To whom it may concern:

Please be advised that this firm represents MSP Recovery, LLC who is the assignee of all subrogation claims and/or claims whereby Florida Health Care Plus is deemed to be a secondary payor pursuant to 42 U.S.C. §1395y(b)(3)(A). We are hereby placing you on notice that pursuant to my clients' rights as an MA (Medicare Advantage Plan) and/or as a payor of Medicaid assigned obligee, our client has the same rights as would Medicare and/or Medicaid. Also, to the extent that FHCP has made payment for medical benefits, we hereby assert our rights as a Medicare assignee.

Accordingly, to the extent that you and/or your insured has available liability and/or medical payments coverage, and/or No-Fault Coverage, we are hereby placing you on notice that Florida Health Care Plus is asserting a lien for all benefits paid and/or to be paid as it pertains to the above referenced member. Additionally, pursuant to the Medicare Secondary Payor Act, all contractually required payments for medical expenses should be paid forwith, hence, if Medical Payment and/or No-Fault Coverage and/or other coverage exists contractually, demand is hereby made that MSP Recovery, LLC be compensated right away.

Please also be advised that the Medicare Secondary Payor Act preempts many of the provisions of State Law.

5000 S.W. 75th Avenue, Suite 400, Miami, Florida 33155
Telephone: (305) 614-2222 / Fax: (305) 239-8870 / E-mail: recovery@msprecovery.com /
Website: www.msprecovery.com

MSP Recovery Law Firm

This document is a formal demand letter under § 627.736 (10) for the full payment of the amounts listed below:

Provider	Date of Service	Charges	Diagnosis Codes
JFK MEDICAL CENTER, JFK MEDICAL CENTER LIMITED PARTNERS	5/29/2014	$45.00	847.0,847.0,724.5,723.1,729.5,E812.0,847.2,823.00,722.4,722.52
JFK MEDICAL CENTER, JFK MEDICAL CENTER LIMITED PARTNERS	5/29/2014	$3,688.00	847.0,847.0,724.5,723.1,729.5,E812.0,847.2,823.00,722.4,722.52
JFK MEDICAL CENTER, JFK MEDICAL CENTER LIMITED PARTNERS	5/29/2014	$3,628.00	847.0,847.0,724.5,723.1,729.5,E812.0,847.2,823.00,722.4,722.52
JFK MEDICAL CENTER, JFK MEDICAL CENTER LIMITED PARTNERS	5/29/2014	$1,900.00	847.0,847.0,724.5,723.1,729.5,E812.0,847.2,823.00,722.4,722.52
JFK MEDICAL CENTER, JFK MEDICAL CENTER LIMITED PARTNERS	5/29/2014	$1,900.00	847.0,847.0,724.5,723.1,729.5,E812.0,847.2,823.00,722.4,722.52
JFK MEDICAL CENTER, JFK MEDICAL CENTER LIMITED PARTNERS	5/29/2014	$2,241.00	847.0,847.0,724.5,723.1,729.5,E812.0,847.2,823.00,722.4,722.52
JFK MEDICAL CENTER, JFK MEDICAL CENTER LIMITED PARTNERS	5/29/2014	$1,096.00	847.0,847.0,724.5,723.1,729.5,E812.0,847.2,823.00,722.4,722.52

Please be advised that certain claims that have been provided have been converted from electronic format into a readable format. We will provide you with (5) days to request that we send you the claims through a secure email so that the insurer can process electronically. If you have any questions and/or concerns please email us at recovery@msprecovery.com .

Demand is hereby made for payments of the medical services and treatment provided to the above named patient for the dates of service of 05/29/2014 through 05/29/2014 by Medical providers (i.e. Florida Health Care Plus) totaling $ 14,498.00, of which 80 % is due less deductible if applicable. The medical provider has received $ 0.00, which is not the total amount due for the services billed and rendered. Enclosed please find the requisite itemized statement or copies of the bills submitted. If the above

5000 S.W. 75th Avenue, Suite 400, Miami, Florida 33155
Telephone: (305) 614-2222 / Fax: (305) 239-8870 / Email: recovery@msprecovery.com /
Website: www.msprecovery.com

MSP Recovery Law Firm

amounts have been paid or any of the above captioned information is not correct please contact the undersigned. Pursuant to Florida Law, demand is also hereby made for reimbursement of the postage cost as indicated on envelope.

Florida Statutes require that if payment of the overdue amount is made within Thirty (30) days of receipt of this letter, said payment must include the applicable interest and 10% penalty of the overdue amount paid, subject to maximum penalty of $250.00. Payments are to be made to MSP Recovery, LLC for

benefits, interest, penalty and postage. The payments are to be mailed to the undersigned. Failure to issue both payments in full within 30 days after receipt of this notice will result in litigation by MSP Recovery Law Firm on behalf of MSP Recovery, LLC.

Additional requests pursuant to Florida Statute § 627.4137, 627.7401, 627.736(6)(d) and the policy that covers this loss, please provide us a statement, under oath, of a corporate officer or the insurer's claims manager or superintendent setting forth the following information with regard to each known policy if insurance, including excess or umbrella insurance:

(A) the name of the insurer
(B) the name of each insured
(C) the limits of liability coverage (including PIP and Med Pay coverage)
(D) A statement of any policy or coverage defense which such insurer reasonably believes is available to such insurer at the time of filing such statement
(E) A copy of the policy

Please include a copy of the patient/claimant's PIP payout sheet and any explanations of benefits generated concerning the above mentioned dates of service. All notices for IME appointments with proof of mailing, all medical reports done by IME or peer review doctors on behalf of the insurance company, all EUO notices with proof of mailing , EUO transcription or recordings and all denials letters.

In addition, pursuant to Florida Statute § 627.4137(1)(e) and 627.7401, please consider this a written request for disclosure of the named and coverage of each known insurer to the claimants and forward this request for information as required by this subsection to all affected insurers.

The undersigned serves notice to all that Florida Health Care Plus asserts this Medicare Advantage Plus Lien payments made for medical services and/or supplies pursuant to a Medicare Advantage Plus Plan.

This lien is being asserted pursuant to the Medicare Secondary Payor Act Section 1862(b)(2)(B)(ii) of the Social Security Act. Notice is hereby given that as a secondary payor, any contractually required payment(s) for medical services and/or supplies should be made to MSP Recovery, LLC as assignee of Florida Health Care Plus forthwith.

5000 S.W. 75th Avenue, Suite 400, Miami, Florida 33155
Telephone: (305) 614-2222 / Fax: (305) 239-8870 / Email: recovery@msprecovery.com /
Website: www.msprecovery.com

MSP Recovery Law Firm

Thank you for your anticipated cooperation and immediate response to our requests. Should you have any questions please contact the undersigned, do not contact medical provider.

Sincerely,

John H. Ruiz

John H. Ruiz, Esq.
jruiz@msprecovery.com

5000 S.W. 75th Avenue, Suite 400, Miami, Florida 33155
Telephone: (305) 614-2222 / Fax: (305) 239-8870 / Email: recovery@msprecovery.com /
Website: www.msprecovery.com

Filing # 23290817 E-Filed 02/03/2015 11:20:27 AM

IN THE COUNTY COURT OF THE
11th JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

MSP RECOVERY, LLC.,
a Florida profit corporation,

Plaintiff,

v.

CASE NO.: 2014-16131-CC 25

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,
a Foreign profit corporation,

Defendant,

_____/

NOTICE OF FILING PROOF OF SERVICE

COMES NOW the Plaintiff, by and through undersigned counsel and hereby files the attached Notice of Service of Process to the Chief Financial Officer of the State of Florida, and respectfully requests the Clerk of Court to file same in the above-captioned case. The Chief Financial Officer of the State of Florida accepted service on January 22, 2015, forwarded; via electronic delivery, to the designated agent on January 26, 2015. Therefore, Defendant's answer is due February 16, 2015.

WE HEREBY CERTIFY that a true and complete copy of the foregoing was electronically filed via Florida Courts E-Filing Portal on this 3rd day of February, 2015.

Respectfully submitted,

MSP RECOVERY LAW FIRM
5000 S.W. 75th Avenue, Suite 400
Miami, Florida 33155
Direct Line (305) 614-2222

By: /S/ Rebecca Rubin del Rio, Esq.
□ John H. Ruiz, Esq., FL Bar No. 928150
□ Karen J. Barnet-Backer, Esq., FL Bar No. 054482
□ Rebecca Rubin del Rio, Esq., FL Bar No. 057013
□ Gustavo J. Losa, Esq., FL Bar No. 852791
□ Christine Lugo, Esq., FL Bar No. 109515
□ Gino Moreno, Esq., FL Bar No. 112099
Service email: serve@msprecoverylawfirm.com

CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

15-007374

MSP RECOVERY, LLC.,
A FLORIDA PROFIT CORPORATION

PLAINTIFF(S),

VS.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, A FOREIGN PROFIT CORPORATION

DEFENDANT(S).

CASE #: 2014-16131-CC 25
COURT: COUNTY COURT
COUNTY: MIAMI-DADE
DFS-SOP#: 15-007374

SUMMONS 20 DAY CORPORATE SERVICE, COMPLAINT FOR DAMAGES FOR FALIURE TO COMPLY WITH MEDICARE SECONDAY PAYOR ACT, DOCUMENTS, DISCOVERY

NOTICE OF SERVICE OF PROCESS

NOTICE IS HEREBY GIVEN of acceptance of Service of Process by the Chief Financial Officer of the State of Florida. Said process was received in my office by MAIL on the 22nd day of January, 2015 and a copy was forwarded by Electronic Delivery on the 26th day of January, 2015 to the designated agent for the named entity as shown below.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
JOHN MONSANTO
VP-OPERATIONS
STATE FARM
7401 CYPRESS GARDENS BLVD
WINTER HAVEN, FL 33888

*** Our office will only serve the initial process (Summons and Complaint) or Subpoena and is not responsible for transmittal of any subsequent filings, pleadings or documents unless otherwise ordered by the Court pursuant to Florida Rules of Civil Procedure, Rule #1.080.**

Jeff Atwater
Chief Financial Officer

cc to: Plaintiff's Representative for filing in appropriate court:

JOHN H. RUIZ
5000 S.W. 75TH AVE.
SUITE 400
MIAMI FL 33155

TSC

Division of Legal Services - Service of Process Section
200 East Gaines Street • P.O. Box 6200 - Tallahassee, Florida 32314-6200 • (850) 413-4200 - Fax (850) 922-2544

☐ IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA.
☒ IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA.

DIVISION	SUMMONS 20 DAY CORPORATE SERVICE (a) GENERAL FORMS	CASE NUMBER
☒ CIVIL ☐ DISTRICTS ☐ OTHER		2014-16131-CC 25

PLAINTIFF(S)	VS. DEFENDANT(S)	SERVICE
MSP RECOVERY, LLC., a Florida profit corporation	STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, a Foreign profit corporation	

THE STATE OF FLORIDA:

To Each Sheriff of the State:

YOU ARE COMMANDED to serve this summons and copy of the complaint or petition in this action on defendant(s): STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

c/o Florida Chief Financial Officer as RA

200 East Gaines Street, Tallahassee, FL 32399

Each defendant is required to serve written defense to the complaint or petition on Plaintiff's Attorney: MSP RECOVERY LAW FIRM

whose address is: 5000 S.W. 75 AVE, Suite 400, Miami, FL 33155

(305) 614-2222

within 20 days " **Except when suit is brought pursuant to s. 768.28, Florida Statutes, if the State of Florida, one of its agencies, or one of its officials or employees sued in his or her official capacity is a defendant, the time to respond shall be 40 days. When suit is brought pursuant to, 768.28, Florida Statutes, the time to respond shall be 30 days."** after service of this summons on that defendant , exclusive of the day of service, and to file the original of the defenses with the Clerk of this Clerk Court either before service on Plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

CLOCK IN

HARVEY RUVIN CLERK OF COURTS	BY: MICHELLE GONZALEZ DEPUTY CLERK	JAN 18 2015 DATE

AMERICANS WITH DISABILITIES ACT OF 1990
ADA NOTICE

"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the Eleventh Judicial Circuit Court's ADA Coordinator, Lawson E. Thomas Courthouse Center, 175 NW 1st Ave., Suite 2702, Miami, FL 33128, Telephone (305) 349-7175; TDD (305) 349-7174, Fax (305) 349-7355 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711."

CLK/CT. 314 Rev. 01/11 Clerk's web address: www.miami-dadeclerk.com

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IN THE COUNTY COURT IN AND FOR
DADE COUNTY, FLORIDA
CASE NO.: 14-16131 CC 25

MSP RECOVERY, LLC

Plaintiff,

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant,

_____/

ANSWER AND AFFIRMATIVE DEFENSES

COMES NOW, The Defendant, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, by and through undersigned counsel, files this, its Answer and Affirmative Defenses to Plaintiff's Complaint and states as follows:

1. Denies.
2. Without knowledge.
3. Admits.
4. Defendant is without knowledge as to whether or not MSP is the assignee of FHCP and denies the remainder of paragraph 4.
5. Defendant admits that it was MM's PIP insurer and denies the remainder of paragraph 5.
6. Without knowledge.
7. Denies.
8. Denies.
9. Admits.

FACTS AND PROCEDURAL BACKGROUND COMMON TO ALL COUNTS

10. Without knowledge.
11. Without knowledge.
12. Without knowledge.

13. Denies.

14. Defendant admits a copy of the letter is attached as Exhibit B and denies the remainder of paragraph 14.

15. Defendant admits a copy of the letter is attached as Exhibit C and denies the remainder of paragraph 15.

16. Defendant admits a copy of the letter is attached as Exhibit D and denies the remainder of paragraph 16.

17. Without knowledge.

18. Denies.

19. Denies.

LEGAL BACKGROUND, INTRODUCTION TO THE MSP ACT, PAYMENT REQUIREMENTS AND THE RECOVERY OF PAYMENTS, AND FEDERAL LAW PREEMPTS STATE LAW

Defendant moves to strike the allegations contained in paragraphs 20-41 pursuant to F.R.C.P. 1.140(f) as irrelevant and immaterial.

COUNT I: PRIVATE CAUSE OF ACTION FOR DOUBLE DAMAGES

42. Defendant re-alleges and re-avers its responses to paragraphs 1 through 40, as it fully stated herein.

43. Without knowledge.

44. Without knowledge.

45. Denies.

46. Denies.

47. Denies.

48. Denies.

COUNT II: ACTION FOR DAMAGES

49. Defendant re-alleges and re-avers its responses to paragraphs 1 through 40, as it fully stated herein.

50. Without knowledge.

51. Without knowledge.

52. Denies.

53. Denies.

54. Denies.

55. Without knowledge.

56. Without knowledge.

57. By way of further answer Defendant states that all payments were properly issued pursuant to the policy of insurance and Fla. Stat. § 627.736.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

58. The Defendant, State Farm Mutual Automobile Insurance Company, issued payment to medical providers performing medical services to "MM" in the amount of $10,000.00, which is the policy limits for personal injury protection benefits. Therefore the personal injury protection benefits are exhausted and no further benefits are due and owing from the Defendant.

SECOND AFFIRMATIVE DEFENSE

59. The Plaintiff failed to timely submit bills for dates of service date of service 5/29/2014 in violation of Fla. Stat. § 627.736(5)(c).

THIRD AFFIRMATIVE DEFENSE

60. Plaintiff does not have standing as Plaintiff does not have an assignment of benefits not has Plaintiff attached any contracts showing it has standing.

FOURTH AFFIRMATIVE DEFENSE

61. Plaintiff's claim is subject to a $1,000.00 deductible.

WHEREFORE, the Defendant, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, has answered and affirmatively responded to Plaintiff's complaint and demands a trial by jury.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via electronic service to John H. Ruiz, Esq., at serve@msprecoverylawfirm.com on this day of FEB 17 2015.

Respectfully submitted,

MATT HELLMAN, P.A.
Attorneys for Defendants
8751 W. Broward Boulevard Suite 408
Plantation, Florida 33324
Telephone: (954) 476-0007
Facsimile: (954) 476-0338
E-service: lawsuits@hellmanlaw.com

BY: _____
Matt Hellman, Esq.
FBN: 0325309

cc: Jay Honeck 59-4M73-505 MH2015-130

IN THE COUNTY COURT OF THE
11th JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

MSP RECOVERY, LLC,
a Florida profit corporation,

Plaintiff,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant,
_____/

CASE NO.: 2014-16131 CC 25

AMENDED COMPLAINT FOR DOUBLE DAMAGES FOR FAILURE TO COMPLY WITH MEDICARE SECONDARY PAYOR ACT

COMES NOW, Plaintiff, MSP Recovery, LLC ("Plaintiff" and with all rights as assigned by FLORIDA HEALTHCARE PLUS "FHCP"), by and through its undersigned counsel and hereby brings this Amended Complaint in and against Defendant, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY ("Defendant"), and, in support thereof, states as follows:

GENERAL ALLEGATIONS

1. This is an action for damages less than Fifteen Thousand Dollars ($15,000.00), exclusive of interests, costs, and attorney's fees.

2. At all times hereto, Florida Healthcare Plus ("FHCP") is a Health Maintenance Organization (HMO) that is focused on serving the needs of its members through its Pre-Paid Medicare, and Medicare managed care programs delivered through its integrated team of physicians and health care professionals. Pursuant to the terms of the Medicare Advantage Plan, the insurance policy involved herein was issued by FHCP to cover claims made as delineated in the policy of insurance and as required by a Medicare Advantage Plus participant.

3. FHCP is a participant provider in the Medicare program that conducts business in Miami-Dade County, Florida under the Medicare Secondary Payer Act ("MSP Act") with a principal mailing address of: 2100 Ponce De Leon Blvd, Coral Gables, FL 33134.

4. At all times material hereto, Plaintiff was and is a Florida profit corporation organized to conduct business in the state of Florida with a principal mailing address of: 5000 S.W. 75th Avenue, Suite 400, Miami, Florida 33155. FHCP is a medical provider and/or assignee that does business in Miami-Dade County, Florida. FHCP issued the insurance policy involved in the instant matter to cover claims as delineated in the policy of insurance and as required by a Medicare Advantage Plus participant .

5. Plaintiff entered into an agreement with FHCP in which FHCP assigned to La Ley Recovery claims to recovery amounts owed to FHCP. Specifically, the agreement states the following

> "It is the intent of the parties to assist each other in the implementation of a system whereby [FHCP] and/or any entity it has contracted to recover, shift and/or bill on a service for all medical services and/or medications, diagnostic test or any amount it is obligated to pay to/or on behalf of any member or other liability that can be legally collected through an **assignment** of any kind and/or through Medicare and/or Medicaid rights and/or by State and/or Federal statute of any kind and/or any right of any nature whatsoever that exists now or in the future. By way of this agreement, [FHCP] appoints, directs, and otherwise **assigns** all of [FHCP's] rights as it pertains to the rights pursuant to any plan, State or Federal statute whatsoever directly and/or indirectly for any its members and/or plan participants." (emphasis added).

6. Moreover, La Ley Recovery assigned all the recovery and/or reimbursement rights they received from FHCP to MSP Recovery, LLC. Specifically, the assignment from La Ley Recovery to MSP Recovery, LLC states the following:

> "LA LEY RECOVERY SYSTEMS, INC. ("La Ley Recovery Systems"), for and in consideration of the sum of Ten Dollars

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($10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does by these presents, assign, sell, transfer, convey, and set over to MSP RECOVERY, LLC., ("Assignee"), its successors and assigns, all rights, title and interest in and to the agreement (the "Agreement") entered by and between La Ley Recovery Systems and Florida Healthcare Plus, Inc., on April 14th, 2014, as it relates to the recovery of claims of member, C.G., and related documents evidencing a security interest, liens or other security interests or encumbrances executed, filed and/or created in conjunction with collateral securing the Agreement. This Assignment is made without recourse or warranty except as referred to herein. The assignor has assigned this claim(s), pursuant to the underlying agreement but also assigns all causes of action to Assignee as it relates to C.G. This assignment shall encompass all of the rights from La Ley Recovery Systems and/or FHCP assigned to La Ley Recovery Systems by that Agreement dated on April 14th, 2014" (See Exhibit A, *Assignment Between La Ley Recovery and MSP Recovery, LLC*)

7. Plaintiff is the assignee of La Ley Recovery's FHCP recovery and/or reimbursement claims as it pertains to any and all rights as assignee and/or as the party entitled to recover any amounts owed to FHCP by nature of Defendant's obligation as a primary payer to pay for member's medical bills. Defendant was under an affirmative duty to pay for any and all medical services related to the accident. Defendant had to either pay for the medical services, pay back FHCP as a Medicare Advantage ("MAO"), and/or set aside benefits to pay FHCP as FHCP was not required to pay for any of these services.

8. At all times material hereto, Defendant is a Foreign Profit Corporation organized to conduct business in the state of Florida with a registered agent and address of: CHIEF FINANCIAL OFFICER, 200 E. Gaines Street, Tallahassee, FL 32399.

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9. Defendant is M.M.[1]'s PIP insurer and otherwise, was the primary payer as it relates to any Medicare bills that were accident related.

10. Venue is proper in this Court under Florida Statute 47.051 as Defendant maintains offices for the transaction of its customary business in Miami-Dade County, Florida.

11. Plaintiff has complied with all conditions precedent to the institution of this action.

12. All parties are otherwise *sui juris*.

FACTS AND PROCEDURAL BACKGROUND COMMON TO ALL COUNTS

13. On or about May 29th, 2014, M.M. was attempting to exit a parking lot on 4849 South Military Trail when a second vehicle struck him from behind. M.M. suffered bodily injury and otherwise incurred medical bills. (See Exhibit A, *Police Report*).

14. At all times material hereto, M.M. received medical services and/or supplies for which FHCP was charged. All of these claims are now owned by Plaintiff.

15. At all times material hereto, FHCP is a Health Maintenance Organization (HMO) that is focused on serving the needs of its members through its Pre-Paid, Medicare, and Medicare managed care programs delivered through its integrated team of physicians and health care professionals.

16. The subject medical services and/or supplies rendered to M.M. were all reasonable, related, and necessary, and were required to be paid within thirty (30) days of receipt of the claim.

17. On or about September 9th, 2014, the undersigned attorney sent a letter to Karen

[1] In order to ensure that this document is HIPPA compliant, the insured's initials will be utilized for identification purposes. Furthermore, should this Court need to further verify the identification of the subject claim, please see Exhibit B.

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Renshaw, informing her that the undersigned firm represented MSP Recovery, LLC as an assignee of all subrogation claims and/or claims whereby Florida Health Care Plus was deemed to be a secondary payer pursuant to 42 U.S.C. §627.4127. In said letter, the undersigned attorney placed STATE FARM on notice that pursuant to FHCP's rights as an MA (Medicare Advantage Plan) and /or Medicaid assigned oblige, FHCP had the same rights as would Medicare/and or Medicaid to the extent that payment for medical benefits had been made. (See Exhibit B, *Letter to Karen Renshaw*).

18. On that same day, Plaintiff also sent its Notice of Lien Pertaining to Payments Made on Behalf of a Medicare Advantage Plan Member in order to serve as formal notice that a lien is being asserted pursuant to the Medicare Secondary Payer Act Section 1862(b)(2)(B)(ii) of the Social Security Act and/or Equitable Rights as provided by Florida law. (See Exhibit C, *Notice of Lien Pertaining to Payments Made on Behalf of a Medicare Advantage Plan Member*).

19. On or about December 9th, 2014, the undersigned attorney sent a formal demand letter, under §627.736 (10) for payment of medical services and treatment provided by FHCP. As per the FHCP Medical Claims Report, there was a total charge of $771.00 for the medical services provided to M.M.. (See Exhibit D, *Demand Letter and Medical Claims Report*).

20. FHCP is a participant provider in the Medicare program that conducts business in the State of Florida under the Medicare Secondary Payer Act ("MSP Act").

21. Plaintiff seeks to recover and be reimbursed for the medical services charged to M.M. times two pursuant to the private cause of action of the Medicare Secondary Payer Act because Defendant failed to pay and/or reimburse FHCP as a primary payer. Defendant is now required to pay twice the amount.

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22. As of the filing of this lawsuit, Defendant has failed to make the payments and otherwise, failed to reimburse FHCP. Defendant was obligated and had an affirmative duty to investigate and pay prior to FHCP.

LEGAL BACKGROUND

23. Medicare embodies our nation's commitment to the health care of seniors and the disabled and is the "nation's second largest social insurance program" with over 47.5 million people who were covered during 2011. *See 2011 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplemental Medical Insurance Trust Funds, available at https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/ReportsTrustFunds/downloads/tr2011.pdf.* The Medicare Statute divides Medicare benefits into four (4) categories: Part A, "Hospital Insurance Benefits for Aged and Disabled;" Part B, "Supplementary Medical Benefits for Aged and Disabled;" Part C, "Medicare Advantage;" and Part D, which provides prescription drug coverage for Medicare enrollees. *See In re Avandia Mktg*, 685 F.3d 353, 357 (3d Cir. Pa. 2012). This suit challenges practices that drain money from the Medicare trust funds and increase the costs borne by the elderly and low-income beneficiaries.

24. The Medicare Act guarantees that eligible Medicare Beneficiaries have the right to elect to receive Medicare benefits either through the original Medicare fee-for-service program or through a Medicare Advantage Plan. 42 U.S.C. § 1395w-21(a). The funds used for the Medicare Advantage benefits originate from the Medicare Trust Funds.

25. The Secretary of the U.S. Department of Health and Human Services (HHS) is the federal officer that is responsible for the administration of the Medicare program, and has delegated

authority over Medicare to a subunit of HHS, the Centers for Medicare and Medicare Services ("CMS"). 42 U.S.C. §1395hh(a)(1) and §1395kk(a). To provide for the day-to-day administration of the Medicare program, CMS usually acts through contractors wherein the "Secretary may perform any of his functions under this subchapter directly, or by contract providing for payment in advance, or by way of reimbursement, and in such installments, as the Secretary may deem necessary." 42 U.S.C. § 1395kk(a).

26. The Secretary through CMS is able to control Medicare Advantage organizations through the bid process, its contracts with the organization, audits, and through the threat of sanctions and contract termination. Additionally, the Secretary, through CMS, is able to determine to whom to award Medicare Advantage contracts to, as well as whether to approve or reject annual bids.

27. To qualify to contract as a Medicare Advantage organization, the interested entity must demonstrate that they have sufficient financial and administrative capacity to fulfill their obligations under the contract with CMS. It should be noted that CMS pays Medicare Advantage organizations and delegates to them the obligation to administer, pay, and assume Medicare's economic risk for the Medicare benefits provided to Medicare Advantage enrollees. The amount that is paid to the Medicare Advantage organization is carefully calibrated and takes the following factors into consideration: geographic location, age, disability status, gender, institutional status, and the health status of each Medicare Advantage enrollee. 42 U.S.C. §1395w-23(c).

Introduction To The Medicare Secondary Payer Act

28. In 1980, while confronted with skyrocketing Medicare costs, Congress recognized that those responsible for the payment of medical costs when people were injured (i.e. employers and

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liability insurers) often allowed Medicare to pay the medical bills as the "primary payer" when an employee or a tort victim was older than 65. To curtail this practice, Congress enacted the MSP Act, which made liability insurers and self-insured tortfeasor responsible as the "primary" payers of [an] injured persons' medical costs." 42 U.S.C. § 1395y(b)(2)(A).

29. The underlying intent behind the enactment of the MSP Act was to shift the financial burden of health care from the Medicare program to private insurers to lower the cost of the Medicare program.

30. The MSP Act creates a federal coordination of benefits wherein workmen's' compensation, liability insurance and self-insurance, and no-fault insurance are deemed primary, and Medicare benefits are secondary. See 42 U.S.C. § 1395y(b)(2); 42 C.F.R. §422.108(b)(3); *Appalachian Regional Healthcare v. Shalala,* 131 F.3d 1050, 1052 (D.C. Cir. 1997). The MSP Act provides that Medicare cannot pay medical expenses where "payment has been made or can reasonably be expected to be made under a workmen's compensation law or plan of the United States or a State or under an automobile or liability insurance policy or plan (including a self-insured plan) or under no fault insurance." *See In re Avandia Mktg,* 685 F.3d 353, 358 (3d Cir. Pa. 2012). Under the MSP Act, "Medicare benefits are secondary to benefits payable by a primary payer even if State law or the primary payer states that its benefits are secondary to Medicare benefits or otherwise limits its payments to Medicare beneficiaries." 42 C.F. R. § 411.32(a)(1). However, if a payment has not been made or cannot be expected to be promptly made by a primary payer, Medicare, as the secondary payer, may make a conditional payment. When Medicare makes this conditional payment, it is entitled to receive a reimbursement, once the "government receives notice that a third-party payment has been or could be made with respect

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to the same item or service." *See Fanning v. United States*, 346 F.3d 386, 389 (3d Cir. Pa. 2003). In addition to seeking reimbursement, Medicare has the "right to intervene in the action against a tortfeasor and can bring or join any action against the responsible primary payer … and pursue third parties, including attorneys, who receive payments of any sums which should be reimbursed to Medicare." *See Denekas v. Shalala*, 943 F. Supp. 1073, 1083 (S.D. Iowa 1996); see also 42 U.S.C. §2651(a) (2002).

31. As currently codified, the MSP Act provides, in relevant part, as follows:

> **"(2) Medicare secondary payer**
>
> **(A) In general** - Payment under this subchapter may not be made, except as provided in subparagraph (B), with respect to any item or service to the extent that—
>
> **(i)** payment has been made, or can reasonably be expected to be made, with respect to the item or service as required under paragraph (1), or
>
> **(ii)** payment has been made or can reasonably be expected to be made under a workmen's compensation law or plan of the United States or a State or under an automobile or liability insurance policy or plan (including a self-insured plan) or under no fault insurance.
>
> In this subsection, the term "primary plan" means a group health plan or large group health plan, to the extent that clause (i) applies, and a workmen's compensation law or plan, an automobile or liability insurance policy or plan (including a self-insured plan) or no fault insurance, to the extent that clause (ii) applies. An entity that engages in a business, trade, or profession shall be deemed to have a self-insured plan if it carries its own risk (whether by a failure to obtain insurance, or otherwise) in whole or in part.
>
> **(B) Conditional payment**
>
> **(i)** Authority to make conditional payment The Secretary may make payment under this subchapter with respect to an item or service if a primary plan described in subparagraph (A)(ii) [4] has not made or cannot reasonably be expected to make payment with respect to such item or service promptly (as determined in accordance with regulations).

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Any such payment by the Secretary shall be conditioned on reimbursement to the appropriate Trust Fund in accordance with the succeeding provisions of this subsection.

(ii) Repayment required A primary plan, and an entity that receives payment from a primary plan, shall reimburse the appropriate Trust Fund for any payment made by the Secretary under this subchapter with respect to an item or service if it is demonstrated that such primary plan has or had a responsibility to make payment with respect to such item or service. A primary plan's responsibility for such payment may be demonstrated by a judgment, a payment conditioned upon the recipient's compromise, waiver, or release (whether or not there is a determination or admission of liability) of payment for items or services included in a claim against the primary plan or the primary plan's insured, or by other means. If reimbursement is not made to the appropriate Trust Fund before the expiration of the 60-day period that begins on the date notice of, or information related to, a primary plan's responsibility for such payment or other information is received, the Secretary may charge interest (beginning with the date on which the notice or other information is received) on the amount of the reimbursement until reimbursement is made (at a rate determined by the Secretary in accordance with regulations of the Secretary of the Treasury applicable to charges for late payments).

(iii) Action by United States In order to recover payment made under this subchapter for an item or service, the United States may bring an action against any or all entities that are or were required or responsible (directly, as an insurer or self-insurer, as a third-party administrator, as an employer that sponsors or contributes to a group health plan, or large group health plan, or otherwise) to make payment with respect to the same item or service (or any portion thereof) under a primary plan. The United States may, in accordance with paragraph (3)(A) collect double damages against any such entity. In addition, the United States may recover under this clause from any entity that has received payment from a primary plan or from the proceeds of a primary plan's payment to any entity. The United States may not recover from a third-party administrator under this clause in cases where the third-

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> party administrator would not be able to recover the amount at issue from the employer or group health plan and is not employed by or under contract with the employer or group health plan at the time the action for recovery is initiated by the United States or for whom it provides administrative services due to the insolvency or bankruptcy of the employer or plan. An action may not be brought by the United States under this clause with respect to payment owed unless the complaint is filed not later than 3 years after the date of the receipt of notice of a settlement, judgment, award, or other payment made pursuant to paragraph (8) relating to such payment owed…"

32. In the event that a primary plan fails to pay as a primary payer, or make the appropriate reimbursement, Section 1395y(b)(3)(A) of the MSP Act allows for a private cause of action, which provides as follows:

> "There is established a private cause of action for damages (which shall be in an amount double the amount otherwise provided) in the case of a primary plan which fails to provide for primary payment (or appropriate reimbursement) in accordance with paragraphs (1) and (2)(A)."

According to *In re Avandia Mktg*, the MSP Act "lends itself to [Plaintiff's] position that any private party may bring" a private cause of action, as the provision "is broad and unambiguous, placing no limitations upon which private (i.e. non-governmental) actors can bring suit for double damages when a primary plan fails to appropriately reimburse any secondary payer." *In re Avandia Mktg*, 685 F.3d 353, 359 (3d Cir. Pa. 2012).

33. As such, Plaintiff is deemed to be the assignee of all subrogation claims and/or claims whereby FHCP is deemed to be a secondary payer pursuant to 42 U.S.C. §1395y(b)(3)(A). According to *Gusmano v. GEICO*, 2013 U.S. Dist. 165467 (E.D. Mich. 2013), for the MSP Act to apply, the primary plan must either refuse coverage or terminate a plan holder's coverage and thereby force Medicare to make a conditional payment on its behalf. *Id.*

34. Overall, the purpose of the MSP is to help preserve the Medicare Trust Fund and limit Medicare beneficiaries' out-of-pocket costs. *See Fanning v. United States*, 346 F.3d 386, 388-89 (3d Cir. 2003).

Payment Requirements and the Recovery of Payments

35. Nearly all of the health claims are electronically submitted by the providers. As required by law, regulation, contract, or convention, these claims contain standardized data sets.

36. Medicare Advantage organizations must promptly process and/or pay or deny claims to comply with the specific requirements that are established by federal law, and the terms of the contracts entered into with CMS. 42 U.S.C. §1395w-27(f).

37. When a Medicare Advantage organization makes a payment for medical services that are the responsibility of a primary plan under the MSP Act, those payments are conditional whether the Medicare Advantage organization knew about the primary payer or not. It should be noted that a conditional payment can be defined as a "Medicare payment for services for which another payer is responsible, made either on the bases set forth in subparts C through H of this part, or because the **intermediary or carrier did not know that the other coverage existed.**" 42 C.F.R. §411.21; *also see Collins v. Wellcare Healthcare Plans, Inc.*, 2014 U.S. Dist. LEXIS 174420 at 36 (E.D. La. 2014) (holding "if a MAO is unaware of a primary payer, the MAO would not 'reasonably expect' a primary plan to provide payment.") (emphasis added).

38. As previously indicated, the MSP Act allows for a private cause of action wherein double damages can be recovered in the event that a primary plan fails to pay a primary or make an appropriate reimbursement. As such, a Medicare Advantage organization with advanced Medicare benefits possesses standing to bring a private cause of action.

39. When a MA plan recovers reimbursement from primary plans or other liable parties, these reimbursements help reduce Medicare expenditures by the Medicare Trust Funds. Medicare will seek reimbursement damages from the primary payer. Therefore, Plaintiff, standing in the shoes of FHCP, "must receive a premium over the reimbursement amount to be motivated to bring these lawsuits against private insurers." *Bio-Medical Applications of Tenn., Inc. v. Cent. States Southeast & Southwest Areas Health & Welfare Fund*, 656 F.3d 277, 296 (6th Cir. 2011). The MSP Act "allows for a multiplier of damages to enable the government to recover its funds while also providing a financial incentive for private citizens to bring such suits." *Manning v. Utils. Mut. Ins. Co., Inc., 254 F.3d 387, 394* (2d Cir. 2001).

40. Moreover, pursuant to §627.736(4)(c), Fla. Stat., a primary payer must hold $5,000.00 in reserve to pay for emergency services and car or hospital inpatient care. Fla. Stat. § 627.736(4)(c) states in pertinent part:

> " ...[T]he insure must reserve $5,000.00 of personal injury protection benefits for payment to physicians licensed under chapter 485 or 459 or dentist licensed under chapter 466 who provide emergency services and care, as defined in s. 395.002, or who provide hospital inpatient care..,"

41. In the case where emergency or inpatient services where provided at a hospital, the primary payer must hold the funds in reserve and pay for those services first before any other service providers are paid.

42. Furthermore, an insured has the option to pay for Medical Payment Coverage ("MedPay"), where the insured may be entitled to full payment of his or her medical bills.

43. MedPay is additional coverage that ensures that 100% of an insured's medical bills are paid up to a certain limit.

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Group Health Plans and Taking into Account Medicare Eligibility

44. A "group health plan" means a plan (including a self-insured plan) of, or contributed to by, an employer (including a self-employed person) or employee organization to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families. 26 U.S.C.A. § 5000(b)(1); see also 42 U.S.C. § 1395y(b)(1)(A)(v).

45. The MSP Act sets out a system of rules instructing when group health plans **must** pay for medical items and services. *Bio-Medical*, 656 F.3d at 284; see also 42 U.S.C. § 1395y(b)(1).

46. The first three subparagraphs of Section 1395(b)(1) of the MSP Act prevent group health plans from "taking into account" that a planholder is entitled to Medicare benefits due to being a) at least sixty-five (65) years old, (b) disabled, or (c) diagnosed with end-stage renal disease. *Bio-Medical*, 656 F.3d at 284.

47. Examples of action when a group health plan is "taking into account" a planholder's entitlement to Medicare benefits include, but are not limited to, the following:

a. Failure to pay primary benefits as required by subparts F, G, and H of this part 411;

b. Offering coverage that is secondary to Medicare to individuals entitled to Medicare;

c. Terminating coverage because the individual has become entitled to Medicare, except as permitted under COBRA continuation coverage provisions (26 U.S.C. 4980B(f)(2)(B)(iv); 29 U.S.C. 1162.(2)(D); and 42 U.S.C. 300bb-2.(2)(D));

d. In the case of a LGHP, denying or terminating coverage because an individual is

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entitled to Medicare on the basis of disability without denying or terminating coverage for similarly situated individuals who are not entitled to Medicare on the basis of disability;

e. Imposing limitations on benefits for a Medicare entitled individual that do not apply to others enrolled in the plan, such as providing less comprehensive health care coverage, excluding benefits, reducing benefits, charging higher deductibles or coinsurance, providing for lower annual or lifetime benefit limits, or more restrictive pre-existing illness limitations;

f. Charging a Medicare entitled individual higher premiums;

g. Requiring a Medicare entitled individual to wait longer for coverage to begin;

h. Paying providers and suppliers less for services furnished to a Medicare beneficiary than for the same services furnished to an enrollee who is not entitled to Medicare;

i. Providing misleading or incomplete information that would have the effect of inducing a Medicare entitled individual to reject the employer plan, thereby making Medicare the primary payer. An example of this would be informing the beneficiary of the right to accept or reject the employer plan but failing to inform the individual that, if he or she rejects the plan, the plan will not be permitted to provide or pay for secondary benefits;

j. Including in its health insurance cards, claims forms, or brochures distributed to beneficiaries, providers, and suppliers, instructions to bill Medicare first for services furnished to Medicare beneficiaries without stipulating that such action

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may be taken only when Medicare is the primary payer; and

k. Refusing to enroll an individual for whom Medicare would be secondary payer, when enrollment is available to similarly situated individuals for whom Medicare would not be secondary payer. 42 C.F.R. 411.108(a).

48. Additionally, a group health plan may not differentiate in the benefits it provides between individuals having end stage renal disease ("ESRD") and other individuals covered by such plan on the basis of the existence of ESRD, the need for renal dialysis, or in any other manner. 42 U.S.C. § 1395y(b)(1)(C)(ii).

49. Group health plan actions that constitute differentiation in the plan benefits (and that may also constitute "taking into account" Medicare eligibility or entitlement) include, but are not limited to the following:

a. Terminating coverage of individuals with ESRD, when there is no basis for such termination unrelated to ESRD (such as failure to pay plan premiums) that would result in termination for individuals who do not have ESRD;

b. Imposing on persons who have ESRD, but not on others enrolled in the plan, benefit limitations such as less comprehensive health plan coverage, reductions in benefits, exclusions of benefits, a higher deductible or coinsurance, a longer waiting period, a lower annual or lifetime benefit limit, or more restrictive preexisting illness limitations;

c. Charging individuals with ESRD higher premiums;

d. Paying providers and suppliers less for services furnished to individuals who have ESRD than for the same services furnished to those who do not have ESRD, such

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as paying 80 percent of the Medicare rate for renal dialysis on behalf of a plan enrollee who has ESRD and the usual, reasonable and customary charge for renal dialysis on behalf of an enrollee who does not have ESRD; and

e. Failure to cover routine maintenance dialysis or kidney transplants, when a plan covers other dialysis services or other organ transplants.

50. Furthermore, if a group health plan, acting as the primary payer to the insured, fails to provide for primary payment in accordance with Section 1395y(b)(1) and 1395y(b)(2)(A) of the MSP Act is liable for double damages to the private plaintiff pursuant to 1395y(b)(3)(A) of the MSP Act.

Federal Law Preempts State Law

51. Where there is a conflict between state law and the MSP Act, the MSP Act preempts any state law. *Varacalli v. State Farm Mut. Auto. Ins. Co.*, 763 F.Supp. 205, 209 (E.D. Mich. 1990) (holding that MSP Act preempts No Fault statute where the provisions of the No-Fault Statute conflicts with the MSP Act); *also see Abrams v. Heckler*, 582 F.Supp. 1155 (S.D.N.Y. 1984) (holding MSP Act preempts state no-fault insurance policy); *also see Smith v. Travelers Indem. Co.*, 763 F.Supp. 554 (M.D. Fla. 1989) (holding that MSP Act preempts Florida's collateral source rule which conflicted with congressional intent to make Medicare the secondary payer); also see *U.S. v. Geier*, 816 F.Supp. 1332 (W.D. Wisc. 1993).

52. A state cannot take away Medicare Advantage Plan's right to bill for services for which Medicare is not the primary payer. *See In re Avandia Mktg*, 685 F.3d 353, 357 (3d Cir. Pa. 2012).

53. Moreover, a state cannot take away an MA organization's right under Federal law and the

MSP regulations to bill, or to authorize providers and suppliers to bill, for services for which Medicare is not the primary payer. The MA organization will exercise the same rights to recover from a primary plan, entity, or individual that the Secretary exercises under the MSP regulations in subparts B through D of part 411 of this chapter." 42 CFR §422.108(f)

54. "Medicare benefits are secondary to benefits payable by a primary payer even if State law or the primary payer states that its benefits are secondary to Medicare benefits or otherwise limits its payments to Medicare beneficiaries." 42 C.F. R. § 411.32(a)(1). The Federal Law preempts state laws including the thirty (30) days time payment provisions. Accordingly, there is no requirement to wait thirty (30) days before payment is due.

55. Pursuant to *In re Avandia Mktg*, a Medicare Advantage Plan shall exercise the same rights to recover from a primary plan, entity, or individual that the Secretary exercises under the MSP regulations in subparts B through D of part 411. *See In re Avandia Mktg*, 685 F.3d 353, 357 (3d Cir. Pa. 2012).

Medicare Secondary Payer and Mandatory Insurer Reporting

56. The Medicare, Medicaid and SCHIP Extension of 2007 ("MMSEA") took effect in 2010. Section 111 of the MMSEA contains mandatory reporting requirements with respect to Medicare beneficiaries who have coverage under group health plan (GHP) arrangements as well as for Medicare beneficiaries who receive settlements, judgments, awards or other payments from liability insurance (including self-insurance), no-fault insurance, or worker's compensation, collectively referred to as Non-Group Health Plan (NGHP) or NGHP Insurance.

57. Section 111 of the MMSEA specifically requires the providers of liability insurance

(including self-insurance), no-fault insurance and worker's compensation ("RRE[2]'s") to determine the Medicare-entitlement of all claimants and report certain information about those claims to the Secretary of Health and Human Services. The penalty for non-compliance is strict: $1,000.00 per day of each day the insurer is out compliance.

58. In the instant matter Defendant failed to comply with the mandatory requirements of Section 111 as it did not report the claim to CMS and the Secretary of Health and Human Services to determine whether the patient was entitled to Medicare Benefits and if the Defendant was a primary payer responsible for payment.

Plaintiff is Entitled to Recover from Defendant Double the Amount Plaintiff was Charged

59. MSP Act provides for private cause of action for double damages for the following reasons: 1) Punish and deter illegal action to combat a social ill much like antitrust law and 2) provide financial incentive for private plaintiffs to bring claims against private insurers that have shifted costs to Medicare, so that Medicare is alerted and can seek reimbursement. *Bio-Medical*, 656 F.3d at 296.

60. The Sixth Circuit considers that the "reference point for double damages is the amount the private insurer would have paid, rather than the amount paid by Medicare, because the former exceeds the latter." *Id.*

61. Thus, Plaintiff seeks damages double the amount FHCP would have paid and/or charged.

---

[2] Pursuant to Section 111 of MMSEA, CMS defines an "RRE" as a "Responsible Reporting Entity." 42 U.S.C. 1395y(b)(8) provides that the "applicable plan" is the RRE and defines "applicable plan" as follows: "APPLICABLE PLAN- In this paragraph, the term `applicable plan' means the following laws, plans, or other arrangements, including the fiduciary or administrator for such law, plan, or arrangement: (i) Liability insurance (including self-insurance), (ii) No-fault insurance, (iii) Workers' compensation laws or plans."

COUNT I
PRIVATE CAUSE OF ACTION FOR DOUBLE DAMAGES
PURSUANT TO 42 U.S.C. §1395y(b)(3)(A)

62. Plaintiff re-alleges and re-incorporates the allegations referenced to in Paragraphs 1 through 61.

63. As a Medicare Advantage Organization, FHCP provides Medicare coverage to M.M.

64. Notwithstanding the member's Medicare eligibility, Defendant was the primary insurer and in first priority to make payment of all of the insured's medical payments.

65. FHCP provided in its contract and/or insurance policy between the M.M. and FHCP that FHCP is secondary to other available primary plans including "employer or union group health plan coverage" and "no-fault insurance (including automobile insurance), liability (including automobile insurance), black lung benefits, and workers' compensation." Additionally, FHCP provides in its contract that FHCP has the right and responsibility to collect for covered Medicare services for which Medicare is **not** the primary payer.

66. FHCP made payments of Medicare benefits for medical services provided to M.M.

67. Congress has "established a private cause of action for damages (which shall be in an amount double the amount otherwise provided) in the case of a primary plan which fails to provide for primary payment (or appropriate reimbursement)" in accordance with Section 1395y(b)(3)(A) of the MSP.

68. Defendant has not made the appropriate reimbursements to FHCP for the medical services that were rendered to M.M. wherein FHCP advanced payments.

69. Furthermore, Defendant did not comply with Fla. Stat. § 627.736(4)(c) by failing to hold in reserve $5,000.00 to pay for emergency services and/or hospital inpatient services.

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70. Defendant is statutorily mandated to pay for emergency services and/or hospital inpatient services first before any other service providers are paid.

71. Additionally, Defendant is in violation of Section 111 of the MMSEA ("Section 111") by not complying with the mandatory reporting requirements for Medicare beneficiaries.

72. Due to Defendant's failure to comply with Section 111 reporting requirements, Plaintiff was unaware of any primary payer including but not limited to Defendant at the time the Plaintiff made payment.

73. Plaintiff, standing in the shoes of FHCP, brings this action under the private cause of action established by 42 U.S.C. §1395y(b)(3)(A) to recover from Defendant, double damages for their failure to pay as primary or to make the appropriate reimbursement.

74. Under the private cause of action established by 42 U.S.C. §1395y(b)(3)(A), Plaintiff is entitled to recover "an amount double the amount otherwise provided." Plaintiff is entitled to $14,498.00 for the amounts charged to FHCP, and is entitled to recover double that amount.

WHEREFORE, Plaintiff, MSP Recovery, LLC, demands judgment against Defendant for double damages, reasonable attorney's fees, court costs, interests, and such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, MSP Recovery, LLC, hereby demands a trial by jury of all issues so triable.

Dated: February 19th, 2015.

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was sent via Electronic Service this 20th day of February, 2015 to: **Matt Hellman, Esq.,** *Attorney for Defendant*, at E-mail: lawsuits@hellmanlaw.com.

Respectfully submitted,

LAW OFFICES LA LEY con JOHN H. RUIZ, P.A.
Counsel for Plaintiff
5000 S.W. 75th Avenue, Suite 400
Miami, Florida 33155
Direct Line (305) 614-2239

By: /s/ John H. Ruiz
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Service email: serve@lawofficeslaley.com

CFN: 20150451545 BOOK 29695 PAGE 3783
DATE:07/14/2015 12:27:39 PM
HARVEY RUVIN, CLERK OF COURT, MIA-DADE CTY

IN THE COUNTY COURT OF THE
11th JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

MSP RECOVERY, LLC,
a Florida profit corporation,

Plaintiff,

v.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant,
_____/

CASE NO: 2014-16131 CC 25

AGREED ORDER GRANTING PLAINTIFF'S MOTION TO TRANSFER

THIS CAUSE coming before the Court upon Plaintiff's Motion to Transfer Case from County Court to Circuit Court, and the Court being otherwise fully advised orders as follows:

ORDERED AND ADJUDGED that:

1. Plaintiff's Motion to Transfer Case from County to Circuit Court is **GRANTED**.
2. This case is to be transferred to Circuit Court due to the amount in controversy.
3. Plaintiff is to pay the transfer fee in the amount of $101.00.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 07/10/15.

PATRICIA MARINO PEDRAZA
COUNTY COURT JUDGE

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

1

CFN: 20150451545 BOOK 29695 PAGE 3784

Signed original order sent electronically to the Clerk of Courts for filing in the Court file.

cc: All Counsel of Record

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION
CASE NO: 2015-17104 CA 01

MSP Recovery, LLC

Plaintiff(s),

vs.

State Farm Mutual Auto Insurance Company
Defendant(s),

FILED
2016 JAN 26 PM 12:32
CLERK MIAMI CI...

ORDER
~~GRANTING~~/DENYING w/o prejudice
~~PLAINTIFF'S/DEFENDANT'S~~ Plaintiff's Motion to Amend

THIS CAUSE having come on to be heard on 1/26/16
on Plaintiff's/Defendant's Motion
for Leave to Amend the Complaint
and the Court having heard arguments of counsel, and being otherwise advised in the premises, it is hereupon

ORDERED AND ADJUDGED that said Motion be, and the same is hereby
Denied without prejudice, Plaintiff must first seek transfer of parties under 1.260(c).

DONE AND ORDERED in Chambers at Miami-Dade County, Florida this 26th
day of January, 2016.

CIRCUIT COURT JUDGE

Copies furnished to: Counsel of Record

117_01-554 3/11 Brett Roth, Esq.

John H. Ruiz, Esq.

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION
CASE NO: 2015-017104 CA

MSP Recovery, LLC

Plaintiff(s),

vs.

State Farm Mutual Auto Insurance Company
Defendant(s),

2016 FEB 16 AM 11:57

ORDER
GRANTING/~~DENYING~~
PLAINTIFF'S/~~DEFENDANT'~~S
Motion to Substitute II

THIS CAUSE having come on to be heard on February 16, 2016 on Plaintiff's/Defendant's Motion

for Substitution of Party Plaintiff

and the Court having heard arguments of counsel, and being otherwise advised in the premises, it is hereupon

ORDERED AND ADJUDGED that said Motion be, and the same is hereby

GRANTED. MSPA Claims 1, LLC shall be the named plaintiff in this matter, from the date of this Order.

Clerk is directed to change the style of the case accordingly.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida this 16th day of February, 2016.

CIRCUIT COURT JUDGE

Copies furnished to: Counsel of Record

117_01-554 3/11

John H. Ruiz, Esq.
Brett Roth, Esq.

Barbara Areces
Circuit Court Judge

Filing # 39092305 E-Filed 03/16/2016 02:13:49 PM

IN THE CIRCUIT COURT IN AND FOR THE ELEVENTH CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA GENERAL JURISDICTION DIVISION

CASE NO.: 2015-17104-CA-01

MSPA CLAIMS 1, LLC, a Florida limited liability company, as assignee of Florida Healthcare Plus, on behalf of itself and all other similarly situated Medicare Advantage Organizations in the State of Florida,

Plaintiff,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, a Foreign Profit Corporation,

Defendant.
_____/

"**CLASS REPRESENTATION**"

AMENDED CLASS ACTION COMPLAINT FOR DAMAGES
(as of March 16, 2016)

Plaintiff, MSPA CLAIMS 1, LLC, on behalf of itself and all other similarly situated Medicare Advantage Organizations in the State of Florida, by and through undersigned counsel, hereby sues the Defendant, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY ("Defendant"), a Foreign Profit Corporation, and states as follows:

I. NATURE OF THE ACTION

Plaintiff[1], MSPA CLAIMS 1, LLC, as assignee of Florida Healthcare Plus, ("FHCP") a Medicare Advantage Organization ("MAO") and participant in the Medicare Program pursuant to a Medicare Advantage ("MA") Plan, sues to enforce FHCP's and other MAOs (collectively, the

[1] The terms "MA Plan" and "MAO" refer to the Plaintiff, MSPA CLAIMS 1, LLC, as the assignee of the rights of Florida Healthcare Plus ("FHCP").

"Class") rights of recovery, subrogation rights, third party beneficiary rights and/or recovery and reimbursement rights for the medical payments made as secondary payers. As a secondary payer, Plaintiff seeks to recover from Defendant, a primary plan, as follows:

> (a) reimbursement of all sums, on a fee-for-service basis, that Plaintiff's assignor MAO was billed for medical care and treatment rendered on behalf of its MA enrollees, for which Defendant was responsible as primary payer.

Plaintiff's claims arise from injuries sustained by a Medicare Advantage Enrollee in an automobile accident, and FHCP paid for said medical expenses. As a direct result of the automobile accident, the claims asserted herein are for those services and/or supplies paid by FHCP to treat the injuries suffered by its Enrollee. In addition to having been an MA participant with FHCP, Defendant provided coverage to Enrollee at the time of the accident under a Florida no-fault insurance policy. As assignee of FHCP, Plaintiff's rights, and those of others similarly situated, arise through the payments made by FHCP as a secondary payer, for which Defendant was primarily responsible and should have itself paid, or properly reimbursed FHCP for its payments.

II. JURISDICTION, PARTIES, AND VENUE

1. This is an action for damages, which in the aggregate, exceeds Fifteen Thousand Dollars ($15,000.00). No individual recovery exceeds Ten Thousand Dollars ($10,000.00), as Florida no-fault insurance policies provide no more than Ten Thousand Dollars ($10,000.00) in coverage pursuant to Section 627.736, Florida Statutes. Accordingly, there is no individual claim in this Class Action whereby the damages will exceed Ten Thousand Dollars ($10,000.00), exclusive of interest, attorneys' fees and costs. Moreover, FHCP's aggregate claims against this Defendant do not exceed Seventy-Five Thousand Dollars ($75,000.00).

2. Plaintiff, MSPA CLAIMS 1, LLC, is a limited liability company that is duly organized, validly existing, and in good standing under the laws of Florida, with its principal place of business in Miami-Dade County, Florida.

3. Defendant is a foreign for-profit Corporation organized to conduct business in Florida with a registered agent address of: CHIEF FINANCIAL OFFICER, 200 E. Gaines Street, Tallahassee, FL 32399. Defendant maintains agents to transact its customary business in Miami-Dade County, Florida.

4. As part of its business, Defendant issues insurance policies in Florida that provide personal injury protection ("PIP") benefits, as well as medical and extended medical expense coverage that must comply with Sections 627.730 – 627.7405, Florida Statutes.

5. As a no-fault/PIP insurer, Defendant is a primary payer of any bills for medical services and/or supplies incurred by its insureds resulting from the use, maintenance, or operation of a motor vehicle. Specifically, Section 627.736(4), Florida Statutes, provides:

> PAYMENT OF BENEFITS.—Benefits due from an insurer under ss. 627.730-627.7405 are **primary**, except that benefits received under any workers' compensation law must be credited against the benefits provided by subsection (1) and are due and payable as loss accrues upon receipt of reasonable proof of such loss and the amount of expenses and loss incurred which are covered by the policy issued under ss. 627.730-627.7405.

Id. (emphasis added).

6. FHCP, Plaintiff's assignor, was an MAO with its principal place of business in Miami-Dade County, Florida. FHCP contracted with the Centers for Medicare & Medicaid Services ("CMS") to provide Medicare benefits to eligible members enrolled in FHCP's MA health plan under Part C of the Medicare Act. MA health plan members are referred to as, "enrollees", and FHCP served the needs of its enrollees through its Medicare and managed care programs, delivered through its network of physicians and health care professionals.

7. As an MAO, FHCP provided Medicare benefits to its enrollees and participants pursuant to its "Evidence of Coverage", in compliance with CMS requirements and standards. All funds utilized to service the needs of the Medicare beneficiaries enrolled in MA Plans come directly from the Medicare Trust Fund.

8. FHCP is a secondary payer for medical expenses made on behalf of Enrollee.

9. Venue is proper pursuant to Section 47.051, Florida Statutes, as the cause of action accrued in Miami-Dade County, Florida.

III. BACKGROUND FACTS AND GENERAL ALLEGATIONS

10. On May 29, 2014, Enrollee[2] was attempting to exit a parking lot on 4849 South Military Trial when a second vehicle struck him from behind. (hereinafter referred to as "Accident")

11. Enrollee's injuries arose out of the use, maintenance or operation of a motor vehicle.

12. Enrollee received medical services, treatment, and/or supplies for the injuries sustained in the Accident and incurred reasonable expenses for said necessary medical care and treatment.

13. Defendant issued a policy of insurance to Enrollee that provided PIP benefits, as well as medical and extended medical expense coverage in compliance with Sections 627.730 – 627.7405, Florida Statutes.

14. Defendant's no-fault insurance policy, a primary plan, was in full force and effect at the time of the Accident and provided primary insurance coverage for Enrollee's medical expenses resulting from the Accident. A copy of the policy is not available to Plaintiff and is in

[2] In order to ensure that this document is HIPAA compliant, the Defendant's insured, M.M., shall only be referred to as "Enrollee." The name of Enrollee is known to Defendant but is not pled in this Complaint to protect their privacy.

the exclusive possession of the Defendant. However, every no-fault policy in Florida is required to comply with Florida's No Fault Act, and as a result, the injuries sustained by Enrollee and the corresponding medical services and/or supplies are required to be covered primarily by the Defendant.

15. Pursuant to Florida law, and to the no-fault insurance contract, Defendant had a legal obligation to make primary payment for all medical services provided to its insured as a result of the Accident, but Defendant failed to satisfy that obligation.

16. At the time of the Accident, Enrollee was also a Member of a MA Plan managed by FHCP, which provided medical coverage to Enrollee.

17. Enrollee's Medicare coverage is outlined in an "Evidence of Coverage" contract issued by FHCP and provides that the MA Plan's obligations are secondary to other available insurance plans.

18. Enrollee's MA Plan is considered the "secondary plan" in connection with medical expense coverage for the subject Accident and provides FHCP with reimbursement, recovery and subrogation rights from a "primary plan," Defendant in this instance. These rights are embedded in the EOC and the applicable statutes.

19. FHCP was not primarily responsible for Enrollee's medical expenses because the no-fault insurance policy issued by Defendant was in effect at the time of the Accident and provided for primary coverage for Enrollee's medical expenses. Accordingly, Defendant was primarily liable for the first $10,000 in medical services and/or supplies, provided to Enrollee resulting in the use maintenance or operation of a motor vehicle of which Enrollee incurred the medical services and/or supplies.

20. Even though Defendant's no-fault policy was a primary plan obligating Defendant

to provide primary coverage for Enrollee's medical treatment as a result of the Accident, FHCP was still charged and paid for said medical expenses incurred by Enrollee.

21. The medical services, procedures, and/or products provided to Enrollee and the resulting medical bills charged to FHCP, were necessary and reasonable and were the result of the medical diagnosis, medical treatment, and/or medical conditions and injuries sustained by the Enrollee in the Accident.

22. Enrollee's medical providers determined that the medical services and/or supplies were reasonable and necessary to diagnose and treat a mental and/or physical condition of the Enrollee based on the medical provider's training, education, experience and knowledge.

23. After determining that the medical bills and other charges were for medically necessary procedures and/or services, and in accordance with its "Evidence of Coverage", FHCP discharged its obligation and made payment of all medical bills for the treatment(s) and service(s) rendered to Enrollee related to the Accident.

24. FHCP's payment(s) for Enrollee's medical bills totaled $14,498.00.[3]

25. The medical bills submitted to FHCP for Enrollee's treatment were determined to be "clean claims", meaning that the claims had no defect or impropriety and contained all of the information necessary to determine that the services rendered to Enrollee were medically necessary, reasonable and therefore, required to be paid promptly.

26. As the issuer of the primary plan, Defendant was required to pay for the medical services provided to Enrollee, or to reimburse FHCP for all payments it made on behalf of Enrollee to satisfy such medical bills; however, Defendant failed to do either and continues to do so.

[3] Although FHCP incurred charges above the $10,000 PIP limit, Plaintiff is only seeking to recover up to the PIP policy limit for medical expenses incurred by the Enrollee.

27. A primary plan's failure to pay for medical expenses for which it is responsible, or its failure to reimburse CMS for any payments made on behalf of a beneficiary, vests CMS with a direct right of action against any primary plan.

28. As a result of Defendant's failure to pay for Enrollee's medical expenses as the primary plan, FHCP (an MA Plan) and Plaintiff (as its assignee), have the same rights as CMS to pursue recovery of owed reimbursement of any payments made in accordance with the Code of Federal Regulations.

29. Therefore, CMS and Plaintiff (as assignee of an MAO) are subrogated to any individual, provider, supplier, physician, private insurer, state agency, attorney, or any other entity entitled to payment from a primary payer.

30. By making payments on behalf of Enrollee, FHCP (and subsequently Plaintiff) subrogated to Enrollee's rights pursuant to FHCP's "Evidence of Coverage", but with the additional rights as a Medicare secondary payer.

31. CMS' and Plaintiff's rights are superior to that of an Enrollee, and neither entity is required to comply with the same contractual requirements as the Enrollee, such as "administrative remedies".

32. Upon Defendant's failure to pay as a primary payer for Enrollee's medical bills, Plaintiff vested with the right to bill Defendant directly and recover the owed reimbursements of the payments rendered by FHCP.

33. Plaintiff may seek reimbursement against Defendant directly under the same rights as CMS, *via* the direct rights established by the law, or in the alternative, *via* legal theories such as equitable subrogation and/or as a third party beneficiary.

34. Pursuant to Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of

2007 ("MMSEA"), a responsible reporting entity ("RRE")[4] is required to report its status and responsibility as a primary payer to CMS and/or MAOs, so that an enrollee's Medicare benefits may be properly coordinated.

35. As Defendant is an RRE, it had an affirmative duty to provide notice regarding its primary payment status and responsibility to all entities designated by CMS to receive and process such information, such as FHCP.

36. Defendant failed to report to CMS that Enrollee was a Medicare beneficiary and failed to alert CMS and FHCP that it was the primary payer responsible for Enrollee's medical expenses, to enable the proper coordination of benefits.

37. Defendant also failed to pay for Enrollee's medical expenses, which forced FHCP, the secondary payer, to make payments on behalf of Enrollee.

IV. STANDING

A. FHCP's Direct Right of Subrogation

38. An MA plan, like FHCP, exercises the same rights to recover from a primary plan, entity or individual that CMS exercises under the MSP regulations.

39. As such, once FHCP provides payments in situations where it is deemed a secondary payer, FHCP is automatically subrogated the right to recover reimbursement from the primary plan.

40. FHCP's has a direct statutory and regulatory right of action to recover from any primary plan, such as Defendant.

41. Accordingly, FHCP has standing to assert its subrogation rights against Defendant,

[4] An RRE refers to any (i) liability insurance (including self-insurance); (ii) no-fault insurance; and (iii) workers' compensation laws or plans.

the primary payer in this instance.

B. FHCP's Conventional and Equitable Subrogation Rights

42. At all relevant periods, FHCP provided health insurance, health maintenance organization plans, and third-party administration services to groups and individuals, such as Enrollee.

43. FHCP is entitled to the reimbursement of Medicare benefits it provided on behalf of Enrollee as a proximate result of the subject Accident.

44. FHCP provided these and other benefits to the Enrollee pursuant to its obligations in the "Evidence of Coverage", which specifically grants FHCP broad subrogation and reimbursement rights.

45. FHCP's "Evidence of Coverage" provides as follows:

> [w]e have the **right and responsibility to collect for covered Medicare services** for which Medicare is not the primary payer. According to CMS regulations at 42 CFR sections 422.108 and 423.462, [FHCP], as a Medicare Advantage Organization, will **exercise the same rights of recovery** that the Secretary exercises under CMS regulations in subparts B through D of part 411 of 42 CFR and the rules established in this section supersede any State laws.

(emphasis added).

46. FHCP has rights of subrogation and reimbursement against any primary payer(s) to recover damages for payments provided on behalf of an enrollee, when the primary payer was responsible to tender payment for such medical expenses.

47. In accordance with the applicable MA Plan and Evidence of Coverage, FHCP provided Medicare benefits for necessary, reasonable, and related medical services rendered to Enrollee as a result of the Accident.

48. All of the medical bills for Enrollee's treatment as a result of the Accident, were completely satisfied by FHCP, as a secondary payer.

49. All payments processed and made by FHCP were subject to reimbursement from Defendant, the primary payer.

50. Subrogation would not result in any injustice to the rights of the Defendant.

51. FHCP and Plaintiff, by assignment, stand in the shoes of Enrollee to recover payments processed on Enrollee's behalf by operation of law.

C. Assignments

52. Pursuant to valid assignment agreements, FHCP assigned all of its subrogation claims, recovery, and reimbursement rights and Plaintiff now possesses all of FHCP's claims and subrogation rights to pursue and recover any and all medical claims, bills, and expenses provided by FHCP on behalf of its MA Enrollee, from and against any entity that is liable as a primary payer, including the Defendant.

53. Such assignment agreement(s) are provided in *Exhibit "A"*, attached hereto and incorporated herein by reference.

54. Accordingly, Plaintiff, MSPA CLAIMS 1, LLC, acquired and now possesses all of FHCP's subrogation rights to pursue and recover all medical claims, bills, and expenses FHCP provided on behalf of its MA Enrollee from and against any entity that is liable as a primary payer, including the Defendant.

V. CLASS REPRESENTATION ALLEGATIONS

55. Pursuant to Florida Rule of Civil Procedure 1.220, Plaintiff brings this suit both individually, and on behalf of a Florida class of Medicare Advantage Organizations similarly situated. The Class includes entities that:

> contracted directly with CMS and/or its assignee pursuant to Medicare Part C including, but not limited to, MAOs, and other similar entities, to provide Medicare benefits through a Medicare Advantage plan to Medicare beneficiaries for medical services, treatment, and/or supplies as required and regulated by CMS and HHS, all

of which pertain to the same medical services and/or supplies that were the primary obligation of the Defendant;

have made payment(s) of benefits, services, and/or supplies whereby the MAO, as a secondary payer, has the direct right and responsibility to collect for covered Medicare services, for which the Defendant, as the primary payer pursuant to Defendant's contract covering the Medicare enrollee and Florida no-fault law (Section 627.736(4), Florida Statutes), was/is financially responsible to a Medicare beneficiary; and

have not been reimbursed by Defendant pursuant to the recognized Current Procedure Terminology codes based on the fee-for-service by the primary payer, as delineated by Section 627.736, Florida Statues, for medical services and/or supplies for their damages.[5]

56. The Class includes, but is not limited to, the entities identified and listed in *Exhibit "B,"* attached hereto and incorporated herein by reference.

Commonality

57. This is an action whereby FHCP and the Class are subrogated and otherwise entitled to reimbursement for the payments made at fee-for-service rates, and as more fully delineated by Section 627.736, Florida Statutes. The same common source[6] caused the harm suffered by Plaintiff and the Class.

58. Numerous questions of law and fact are common to the claims of Plaintiff and the members of the Class. Among these questions of law and fact are:

a. Whether Plaintiff and the Class made payment(s) of Medicare benefits for which Defendant, as a no-fault insurance carrier, was responsible as a primary payer;

b. Whether Defendant is the primary payer responsible to pay for Enrollee's medical

[5] The Class entities have not otherwise released their right to reimbursement as secondary payers.

[6] *i.e.*, Defendant's failure to primarily tender payment for an enrollee's medical bills, and Defendant's subsequent failure to reimburse Plaintiff, or other Class Members, for the payment(s) made on behalf of an enrollee, for which Defendant was legally obligated as the primary payer.

expenses pursuant to its contractual obligations and Florida no-fault law;

c. Whether the Enrollee received emergency services and/or hospital inpatient services and/or other medical treatment or supplies as a result of the use, maintenance or operation of a motor vehicle that rendered Defendant primarily responsible to satisfy such expenses, before Plaintiff and the Class were obligated to make secondary payments on behalf of the enrollee;

d. Whether Defendant, as Enrollee's no-fault PIP insurer, is required to reimburse Plaintiff, as the secondary payer, the amount tendered as payment(s) in satisfaction of the medical expenses incurred during Enrollee's emergency/in-patient medical treatment(s), service(s) and/or any other payment(s) tendered by Plaintiff, to which Defendant was primarily responsible to pay pursuant to its contractual and statutory obligations;

e. Whether federal law preempts state law and/or any defenses Defendant might raise, which might conflict with the statutory and regulatory provisions that render CMS and MAOs not responsible for payment of medical services and/or supplies, where a primary payer, like Defendant, exists;

f. Whether Defendant was required to provide notice or otherwise inform Plaintiff, and the Class, that it is a primary payer, and to further provide specifics as to the accident or injury for which it is primarily responsible; and

g. Whether Plaintiff and the Class are authorized to recover the full charged amount from Defendant, as provided in Section 627.736, Florida Statutes.

59. The damages suffered by Plaintiff and the Class Members, were directly and proximately caused by the acts and/or omissions of Defendant, or those under the Defendant's

direction, control, or supervision.

Typicality

60. Both Plaintiff's and the Class Member's claims are typical since all have been damaged legally and/or equitably in the same manner, and Plaintiff asserts the same legal theories of recovery advanced by the Class.

61. Plaintiff's claims are typical of the class members' claims because Defendant failed to reimburse Medicare secondary payers for the payments tendered on behalf of the enrollees in satisfaction of the medical expenses incurred by same. Plaintiff seeks to recover its owed reimbursement, in other words, the payments that Defendant was primarily obligated to provide pursuant to its no-fault insurance policy and/or Section 627.736, Florida Statutes, yet failed to.

62. Plaintiff's claims are predicated on the same statutes, regulations and legal theories and can be proven through class-wide proofs. The facts involving Defendant's practices, actions or omissions are similar with respect to Plaintiff and the Class Members and as such, Defendant's legal defenses are the same for all claims.

63. Defendant, the primary payer, failed to promptly satisfy the enrollees' medical expenses and thereafter failed to appropriately reimburse the Medicare secondary payers, such as Plaintiff and the Class Members, in violation of these Medicare secondary payers' rights.

64. The core issues that predominate over all other issues in this litigation are Defendant's failure to properly satisfy its obligations in accordance with its policy of insurance and in violation of Section 627.736, Florida Statutes, as well as its obligation to reimburse any secondary payers that tendered payment(s) on behalf of the enrollees.

Numerosity

65. The Class is so numerous that joinder of all members is impracticable.

66. The Class is, upon information and belief, comprised of more than twenty-five (25) but less than fifty (50) entries or their assignees, which includes entities that:

> contracted directly with CMS and/or its assignee pursuant to Medicare Part C including, but not limited to, MAOs, and other similar entities, to provide Medicare benefits through a Medicare Advantage plan to Medicare beneficiaries for medical services, treatment, and/or supplies as required and regulated by CMS and HHS, all of which pertain to the same medical services and/or supplies that were the primary obligation of the Defendant;
>
> have made payment(s) of benefits, services, and/or supplies whereby the MAO, as a secondary payer, has the direct right and responsibility to collect for covered Medicare services, for which the Defendant, as the primary payer pursuant to Defendant's contract covering the Medicare enrollee and Florida no-fault law (Section 627.736(4), Florida Statutes), was/is financially responsible to a Medicare beneficiary; and
>
> have not been reimbursed by Defendant pursuant to the recognized Current Procedure Terminology codes based on the fee-for-service by the primary payer, as delineated by Section 627.736, Florida Statues, for medical services and/or supplies for their damages.[7]

Adequacy of Representation

67. Plaintiff is an adequate representative of the Class, as Plaintiff will fairly and adequately protect the interests and claims of all Class Members. Plaintiff, as a member of the Class (as defined herein), is committed to the vigorous prosecution of this action, and retained competent counsel experienced in litigation of this nature. There is no hostility of interests between Plaintiff and the Class Members. Plaintiff anticipates no difficulty in the management of this litigation as a class action. Plaintiff has no claims that are antagonistic to the claims of the Class Members and/or the claims it seeks to represent.

[7] The Class entities have not otherwise released their right to reimbursement as secondary payers.

68. To prosecute this case, Plaintiff has retained John H. Ruiz, Frank C. Quesada, and the MSP Recovery Law Firm. John H. Ruiz has served as lead class counsel for numerous class action cases presiding in both state and federal courts. In addition to being involved in these types of cases, John H. Ruiz handles other complex litigation matters, including trials. Specifically, John H. Ruiz and Frank C. Quesada have the experience and financial ability to prosecute this case. John H. Ruiz has successfully certified numerous no-fault cases affirmed on appeal by the Florida Third District Court of Appeals, a substantial number of which received final settlement approval as being fair, reasonable, and adequate to class members.

VI. REQUIREMENTS OF FLA. R. CIV. P. 1.220(b)

69. This action is maintainable pursuant to Florida Rules of Civil Procedure 1.220 (b)(1)(A) and (b)(3).

70. As a result of Defendant's wrongful conduct and uniformity in the manner of injury sustained and legal issues presented, a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Individual joinder of each member of the Class is impractical, if not impossible. The prosecution of separate claims by individual members of the Class would create a risk of inconsistent or varying adjudications concerning individual members of the Class, which would establish incompatible standards of conduct for Defendant. Furthermore, the burden of this Court of handling several thousand individual cases arising from the same nucleus of operative facts would be excessive and burdensome. Individual litigation would also increase the expense and burden of the litigation to all parties and to the court system. A class action will concentrate all of the litigation in one forum with no unusual manageability problems, particularly in this case where Defendant's liability and the nature of the Class Members' damages may be readily proven through common class-wide proofs.

71. Defendant, its officers, directors, subsidiaries, or any other person or other entity related to, affiliated with or employed by Defendant, is excluded from the proposed Class.

72. The damages caused to Plaintiff, as well as the damage sustained by each Class Member, have been directly and proximately caused by the acts and/or omissions of Defendant, or those under the direction, control, and/or supervision of Defendant.

73. Additionally, Defendant has acted on grounds generally applicable to Plaintiff and all members of the Class.

74. Defendant damaged Plaintiff and the Class Members, as a direct and proximate result of Defendant's acts and/or omissions.

VII. CAUSES OF ACTION

Count I
Breach of Contract for Failure to Pay PIP Benefits

Plaintiff hereby incorporates by reference the allegations of paragraphs one (1) through seventy-four (74) above as if fully set forth herein, and further alleges:

75. CMS and MAOs (*i.e.*, FHCP) have a direct right of action to recover from primary plans, such as Defendant, for any Medicare benefits provided to an enrollee whereby original Medicare was a secondary payer.

76. Like CMS, FHCP is subrogated the right to recover from Defendant, the primary plan, due to its failure to provide primary payment for Enrollee's medical treatment.

77. Plaintiff, as assignee to FHCP, is pursuing reimbursement of the payment(s) rendered on behalf of Enrollee, under its own right to be reimbursed.

78. Plaintiff made a claim under the insurance policy issued by Defendant seeking PIP benefits for services provided to Enrollee. Plaintiff complied with any and all conditions precedent to the institution of this action to the extent applicable.

79. Defendant failed and/or refused to make complete payments of the No-Fault benefits as required by Section 627.736, Florida Statutes.

80. Defendant failed to pay Enrollee's covered losses and Defendant had no reasonable proof to establish that it was not responsible for the payment.

81. Defendant's failure to pay the medical services and supplies damaged Plaintiff as set forth herein.

82. FHCP processed payment in the amount of $14,498.00, pursuant to its agreement with CMS and the provider of services, for the Enrollee's reasonable and necessary medical expenses related to the automobile accident.

83. Plaintiff provided Medicare benefits and seeks to recover the full amount due under the PIP policy, $10,000.00.

WHEREFORE, Plaintiff demands judgment for itself, plus all members of the class, against Defendant for damages, reasonable attorney's fees pursuant to Section 627.428, Florida Statutes, court costs, interests, and such other and further relief as this Court deems just and proper.

Count II
Breach of Contract for Failure to Pay PIP Benefits
[Conventional Subrogation]

Plaintiff hereby incorporates by reference the allegations of paragraphs one (1) through seventy-four (74) above as if fully set forth herein, and further alleges:

84. At the time of the Accident, Defendant maintained an insurance contract with the Enrollee. A copy of this policy is in the exclusive possession of the Defendant.

85. Plaintiff made a claim under the insurance policy issued by the Defendant wherein Plaintiff sought PIP benefits for the services provided to Enrollee. Otherwise, Plaintiff complied with any and all conditions precedent to the institution of this action.

86. Defendant failed and/or refused to make complete payments of the No-Fault benefits as required by Section 627.736, Florida Statutes.

87. Defendant failed to pay Enrollee's covered losses and Defendant had no reasonable proof to establish that it was not responsible for the payment.

88. Defendant's failure to pay for the medical services and supplies provided to Enrollee damaged Plaintiff as set forth herein.

89. FHCP processed payment in the amount of $14,498.00, pursuant to its agreement with CMS and the provider of services, for the Enrollee's reasonable and necessary medical expenses related to the automobile accident.

90. Plaintiff provided Medicare benefits and seeks to recover the full amount due under the PIP policy, $10,000.00.

WHEREFORE, Plaintiff demands judgment for itself, plus all members of the class, against Defendant for damages, reasonable attorney's fees pursuant to Section 627.428, Florida Statutes, court costs, interests, and such other and further relief as this Court deems just and proper.

Count III
Breach of Contract for Failure to Pay PIP Benefits
[or in the alternative, Equitable Subrogation]

Plaintiff hereby incorporates by reference the allegations of paragraphs one (1) through seventy-four (74) above as if fully set forth herein, and further alleges:

91. Plaintiff made a claim under the insurance policy issued by the Defendant seeking PIP benefits for services provided to the Enrollee. Plaintiff otherwise complied with all conditions precedent to the institution of this action.

92. FHCP provided full payment for Enrollee's medical expenses even though it was not primarily liable for the medical expenses, as there was a no-fault insurance policy in effect at

the time of the Accident issued by the Defendant, which provided primary coverage for the Enrollee's medical expenses.

93. Defendant failed and/or refused to make complete payments of the No-Fault benefits as required by Section 627.736, Florida Statutes.

94. Defendant failed to pay Enrollee's covered losses and Defendant had no reasonable proof to establish that it was not responsible for the payment.

95. Defendant's failure to pay the medical services and supplies damaged Plaintiff as set forth herein.

96. FHCP processed payment in the amount of $14,498.00, pursuant to its agreement with CMS and the provider of services, for the Enrollee's reasonable and necessary medical expenses related to the automobile accident.

97. Plaintiff provided Medicare benefits and seeks to recover the full amount due under the PIP policy, $10,000.00.

WHEREFORE, Plaintiff demands judgment for itself, plus all members of the class, against Defendant for damages, reasonable attorney's fees pursuant to Section 627.428, Florida Statutes, court costs, interests, and such other and further relief as this Court deems just and proper.

Count IV
Breach of Contract for Failure to Pay PIP Benefits
[Conventional Subrogation Arising from Third Party Beneficiary Rights]

Plaintiff hereby incorporates by reference the allegations of paragraphs one (1) through seventy-four (74) above as if fully set forth herein, and further alleges:

98. At the time of the Accident, Defendant maintained a contract with Enrollee. A copy of this policy is in the exclusive possession of the Defendant.

99. Plaintiff made a claim under the insurance policy issued by the Defendant wherein

Plaintiff sought PIP benefits for the services provided to Enrollee. Plaintiff otherwise complied with any and all conditions precedent to the institution of this action.

100. Defendant failed and/or refused to make complete payments of the No-Fault benefits as required by Section 627.736, Florida Statutes.

101. Defendant failed to pay Enrollee's covered losses and Defendant had no reasonable proof to establish that it was not responsible for the payment.

102. Defendant's failure to pay for the medical services and supplies provided to Enrollee damaged Plaintiff as set forth herein.

103. FHCP processed payment in the amount of $14,498.00, pursuant to its agreement with CMS and the provider of services, for the Enrollee's reasonable and necessary medical expenses related to the automobile accident.

104. Plaintiff provided Medicare benefits and seeks to recover the full amount due under the PIP policy, $10,000.00.

WHEREFORE, Plaintiff demands judgment for itself, plus all members of the class, against Defendant for damages, reasonable attorney's fees pursuant to Section 627.428, Florida Statutes, court costs, interests, and such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all issues so triable.

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was sent via Electronic Service this 16 day of March , 2015 to: Valerie Greenburg, Esq., Akerman LLP, *Attorney for Defendant*, at E-mail: valerie.greenberg@akerman.com; marcy.aldrich@akerman.com; stacy.rodriguez@akerman.com; debra.atkinson@akerman.com

Respectfully submitted,

MSP Recovery Law Firm
Counsel for Plaintiff
5000 S.W. 75th Avenue, Suite 400
Miami, Florida 33155
Telephone: (305) 614-2239

By: */s/ Frank C. Quesada, Esq.*
Frank C. Quesada, Esq., Fla. Bar No. 29411
Rebecca Rubin-Del Rio, Esq., Fla. Bar No. 57013
serve@msprecovery.com;
fquesada@msprecovery.com;
rdelrio@msprecovery.com.

ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS, that the undersigned

LA LEY RECOVERY SYSTEMS, INC. ("La Ley Recovery Systems"), for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does by these presents, assign, sell, transfer, convey, and set over to MSP RECOVERY, LLC., ("Assignee"), its successors and assigns, all rights, title and interest in and to the agreement (the "Agreement") entered by and between La Ley Recovery Systems and Florida Healthcare Plus, Inc., on April 14th, 2014, as it relates to the recovery of claims of member, M.M., and related documents evidencing a security interest, liens or other security interests or encumbrances executed, filed and/or created in conjunction with collateral securing the Agreement. This Assignment is made without recourse or warranty except as referred to herein. The assignor has assigned this claim(s), pursuant to the underlying agreement but also assigns all causes of action to Assignee as it relates to M.M. This assignment shall encompass all of the rights from La Ley Recovery Systems and/or FHCP assigned to La Ley Recovery Systems by that Agreement dated on April 14th, 2014.

Dated this: 5th day of August, 2014

LA LEY RECOVERY SYSTEMS, INC.

By: _____

Mayra C. Ruiz, Authorized Representative

A

ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS, that the undersigned MSP RECOVERY, LLC. ("Assignor"), for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does by these presents, assigns, sells, transfers, conveys, and sets over to MSPA CLAIMS 1, LLC, ("Assignee"), its successors and assignees, all rights, title and interest in and to the agreement and/or assignment Assignor entered into with La Ley Recovery Systems, Inc. ("La Ley Recovery") to recover any and all claims related documents evidencing a security interest, liens or other security interests or encumbrances executed, filed and/or created in conjunction with collateral securing the Agreement (the "Agreement") La Ley Recovery received from Florida Healthcare Plus ("FHCP") on April 14th, 2014 whereby FHCP is deemed to be a secondary payer pursuant to 42 U.S.C. § 1395y(b)(3)(A), specifically the claim of M.M. This Assignment is made without recourse or warranty except as referred to herein. The assignor has assigned this claim(s), pursuant to the underlying agreement but also assigns all causes of action to Assignee. As such, Assignee is the proper holder of the recovery rights of any and all claims, including the claim of M.M., whereby FHCP is deemed to be a secondary payer pursuant to 42 U.S.C. § 1395y(b)(3)(A).

Dated this **17th day of November, 2015**

MSP RECOVERY, LLC.

By: _____

John H. Ruiz, Manager

Medicare Advantage Organizations

- Aetna Health Inc. d/b/a Coventry Health Plan of Florida, Inc.
- AHF MCO of Florida, Inc. d/b/a Positive Healthcare
- Amerigroup Florida, Inc.
- AvMed, Inc. d/b/a AvMed Health Plans
- Behealthy Florida, Inc. d/b/a Florida Blue
- Better Health, Inc.
- BlueMedicare Preferred HMO
- Capital Health Plan, Inc.
- CarePlus Health Plans, Inc.
- Cigna Healthcare of Florida, Inc.
- Eden Health Plans, Inc.
- Florida Health Care Plans
- Florida Healthcare Plus
- Florida Health Solution HMO Company
- Florida MHS, Inc. d/b/a Magellan Complete Care
- Florida True Health, Inc.
- Freedom Health, Inc.
- Health First Health Plans, Inc.
- Health Options, Inc. d/b/a Florida Blue HMO
- HealthSpring of Florida, Inc. d/b/a Leon Medical Centers Health Plans
- HealthSun Health Plans, Inc.
- Healthy Palm Beaches, Inc.
- Humana Health Insurance Company of Florida, Inc.
- Humana Insurance Company
- Humana Medical Plan, Inc.
- Medica HealthCare Plans, Inc.
- Molina Healthcare of Florida
- Neighborhood Health Partnership, Inc.
- Optimum HealthCare, Inc.
- Preferred Care Partners, Inc.
- Preferred Medical Plan, Inc.
- Simply Healthcare Plans, Inc. d/b/a Clear Health Alliance
- Sunshine State Health Plan, Inc.
- The Public Health Trust of Dade County d/b/a JMH Health Plan
- Ultimate Health Plans, Inc.
- UnitedHealthcare of Florida, Inc.

- WellCare of Florida, Inc.

IN THE CIRCUIT COURT OF THE 11th JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE, FLORIDA

MSPA CLAIMS 1, LLC, a Florida Limited Liability Company, as Assignee of Florida Healthcare Plus, on behalf of itself and all other similarly situated Medicare Advantage Organizations in the State of Florida,

Plaintiff(s),

vs.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, a Foreign Profit Corporation,

Defendant.
_____/

CIRCUIT CIVIL DIVISION

CASE NO.: 2015-17104 CA 01 (23)

ORDER GRANTING, IN PART, and DENYING, IN PART, DEFENDANT'S MOTION TO DISMISS AMENDED CLASS ACTION COMPLAINT FOR DAMAGES (as of March 16, 2016) AND INCORPORATED MEMORANDUM OF LAW

THIS CAUSE, having come before the Court for hearing July 11, 2016, on Defendant, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY's, Motion to Dismiss Amended Complaint for Damages (as of March 16, 2016) and Incorporated Memorandum of Law (Motion), and the Court having reviewed the Motion, the Plaintiff's Response in Opposition, having heard argument of counsel, reviewed the Amended Complaint, the supplemental authority provided, and being otherwise duly advised, it is hereby:

ORDERED AND ADJUDGED as follows:

1. Defendant's Motion to Dismiss is granted, in part, and denied, in part.[1]

[1] This order does not address the class representation allegations.

2. The Amended Complaint contains four counts: Count I, Breach of Contract; Count II, Conventional Subrogation; Count III, Equitable Subrogation; and Count IV, Third Party Beneficiary Rights.

3. The Court agrees with the Plaintiff's contention that it is not subject to any administrative remedy requirement, that it is not required to provide a pre-suit demand letter to the Defendant, and that Plaintiff's action is properly brought in state court. The Court also finds that, at a minimum, Plaintiff would have a claim for equitable subrogation, Count III, against the Defendant.

4. As it pertains to the Defendant's standing argument, the Court finds that although the April 14, 2014 agreement is not attached to the Amended Complaint, Plaintiff's allegations are sufficient to withstand the Motion.

5. In order to maintain its actions for claims, other than Count III, Plaintiff would have to establish a legal right to pursue those claims, either based on a statute allowing a claim in state court or pursuant to a contract. For example, the allegations in paragraph 27 need to cite to a statute or be supported by a contractual provision. In paragraph 27, Plaintiff alleges:

> A primary plan's failure to pay for medical expenses for which it is responsible, or its failure to reimburse CMS *(Center for Medicare and Medicaid Services)* for any payments made on behalf of a beneficiary, vests CMS with a direct right of action against any primary plan. (parenthetical added)

Plaintiff has failed to provide legal authority for this allegation, failed to allege a contract between CMS and the Defendant, failed to allege that such a contract contains a provision that Medicare Advantage Organizations such as FHCP, and its assignees, have the same rights as CMS, and has not attached, if applicable, a copy of said contract. Plaintiff has also not alleged or attached a contract between FHCP and the Enrollee (insured), if any, that allows FHCP and its assignees to pursue claims on the Enrollee's behalf. In paragraphs 13 and 14 of the Amended Complaint Plaintiff does make reference to Defendant's policy of

insurance with the Enrollee which provided personal injury protection (PIP) benefits. However, this policy cannot be the contract pursuant to which Plaintiff is pursuing these claims. Plaintiff is not a party to the policy, there is no provision in the policy that assigns Enrollee's rights to Plaintiff, and Plaintiff is not a third party beneficiary to the policy.

6. Defendant's Motion is granted as to Counts I and II, without prejudice.

7. Defendant's Motion is granted as to Count IV, with prejudice.

8. Defendant's Motion is denied as to Count III.

9. Plaintiff has twenty (20) days from the date of this order to amend its complaint or file a notice waiving its right to amend. Defendant has ten (10) days from service of the amended complaint to file its response. In the event Plaintiff files its notice waiving right to amend, Defendant has ten (10) days to answer Count III.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 07/29/16.

BARBARA ARECES
CIRCUIT COURT JUDGE

No Further Judicial Action Required on THIS MOTION
CLERK TO RECLOSE CASE IF POST JUDGMENT

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed original order sent electronically to the Clerk of Courts for filing in the Court file.

Filing # 46347285 E-Filed 09/12/2016 09:58:00 PM

IN THE CIRCUIT COURT OF THE ELEVENTH CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO. 2015-17104-CA-01

MSPA CLAIMS 1, LLC, a Florida limited liability company, as assignee of Florida Healthcare Plus, on behalf of itself and all other similarly situated Medicare Advantage Organizations in the State of Florida,

Plaintiff,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant.
_____/

CLASS REPRESENTATION

PLAINTIFF'S THIRD AMENDED CLASS ACTION COMPLAINT FOR DAMAGES (Amended as of September 12, 2016)

Plaintiff, MSPA Claims 1, LLC ("Plaintiff"), on behalf of all other similarly situated Medicare Advantage Organizations operating in the State of Florida, through undersigned counsel, hereby sues Defendant, State Farm Mutual Automobile Insurance Company ("Defendant"), and states as follows:

I. NATURE OF THE ACTION

Plaintiff, as assignee of Florida Healthcare Plus, ("FHCP"), a Medicare Advantage Organization ("MAO") and participant in the Medicare Program pursuant to a Medicare Advantage ("MA") plan, sues to enforce FHCP's and other MAOs' (collectively, the "Class") rights of recovery, subrogation, third-party beneficiary, and/or reimbursement for the medical payments made as secondary payers. As a secondary payer, Plaintiff seeks to recover from Defendant, a primary plan, as follows:

(a) reimbursement of all sums, on a fee-for-service basis, that Plaintiff's assignor MAO was billed for medical care and treatment rendered on behalf of its MA enrollees, for which Defendant was responsible as primary payer.

Plaintiff's claims arise from an MA enrollee's injuries sustained in an automobile accident, and FHCP paid for said medical expenses. As a direct result of the automobile accident, the claims asserted herein are for those services and/or supplies FHCP paid to treat the injuries its enrollee suffered. In addition to having been an MA participant with FHCP, Defendant provided coverage to enrollee at the time of the accident under a Florida no-fault insurance policy. As assignee of FHCP, Plaintiff's rights, and those of others similarly situated, arise through the payments made by FHCP, as a secondary payer, for which Defendant was primarily responsible and should have paid, or properly reimbursed FHCP for its payments.

II. JURISDICTION, PARTIES, AND VENUE

1. This is an action for damages, which in the aggregate, exceeds fifteen thousand dollars ($15,000.00). No individual recovery exceeds ten thousand dollars ($10,000.00), as Florida no-fault insurance policies provide no more than ten thousand dollars ($10,000.00) in coverage pursuant to section 627.736, Florida Statutes. Accordingly, there is no individual claim in this Class Action whereby the damages will exceed ten thousand dollars ($10,000.00), exclusive of interest, attorneys' fees, and costs. Moreover, FHCP's aggregate claims against Defendant do not exceed seventy-five thousand dollars ($75,000.00).

2. Plaintiff is a limited liability company that is duly organized, validly existing, and in good standing under the laws of Florida, with its principal place of business in Miami-Dade County, Florida.

3. Defendant is a foreign for-profit corporation organized to conduct business in Florida with a registered agent address of Chief Financial Officer, 200 E. Gaines Street,

Tallahassee, FL 32399. Defendant maintains agents to transact its customary business in Miami-Dade County, Florida.

4. As part of its business, Defendant issues insurance policies in Florida that provide personal injury protection ("PIP") benefits, as well as medical and extended medical expense coverage that must comply with sections 627.730 through 627.7405 of the Florida Statutes.

5. As a no-fault/PIP insurer, Defendant is a primary payer of any bills for medical services and/or supplies incurred by its insureds resulting from the use, maintenance, and/or operation of a motor vehicle. Specifically, section 627.736(4) of the Florida Statutes, provides:

> PAYMENT OF BENEFITS. — Benefits due from an insurer under ss. 627.730-627.7405 are **primary**, except that benefits received under any workers' compensation law must be credited against the benefits provided by subsection (1) and are due and payable as loss accrues upon receipt of reasonable proof of such loss and the amount of expenses and loss incurred which are covered by the policy issued under ss. 627.730-627.7405.

Id. (emphasis added).

6. FHCP, Plaintiff's assignor, was an MAO with its principal place of business in Miami-Dade County, Florida. FHCP contracted with the Centers for Medicare & Medicaid Services ("CMS") to provide Medicare benefits to eligible members enrolled in FHCP's MA health plan under Part C of the Medicare Act. MA health plan members are referred to as "enrollees" and FHCP served the needs of its enrollees through its Medicare and managed care programs, delivered through its network of physicians and health care professionals.

7. As an MAO, FHCP provided Medicare benefits to its enrollees and participants pursuant to its Evidence of Coverage, and in compliance with CMS requirements and standards. All funds utilized to service the needs of the Medicare beneficiaries enrolled in MA Plans come directly from the Medicare Trust Fund.

8. FHCP is a secondary payer for medical expenses made on behalf of Enrollee.

9. Venue is proper pursuant to section 47.051 of the Florida Statutes, as the cause of action accrued in Miami-Dade County, Florida.

III. BACKGROUND FACTS AND GENERAL ALLEGATIONS

10. On May 29, 2014, Defendant's insured, M.M. ("Enrollee"),[1] was attempting to exit a parking lot on 4849 South Military Trial when a second vehicle struck him from behind. (hereinafter referred to as "Accident").

11. Enrollee's injuries arose out of the use, maintenance, and/or operation of a motor vehicle.

12. Enrollee received medical services, treatment, and/or supplies for the injuries sustained in the Accident, which include, but are not limited to, injuries to the neck, lumbar region, cervical disk, and a fracture of the upper end tibia, and incurred reasonable expenses for said necessary medical care and treatment.

13. Defendant issued a policy of insurance to Enrollee that provided PIP benefits, as well as medical and extended medical expense coverage in compliance with sections 627.730 – 627.7405 of the Florida Statutes.

14. Defendant's no-fault insurance policy, a primary plan, was in full force and effect at the time of the Accident and provided primary insurance coverage for Enrollee's medical expenses resulting from the Accident. A copy of the policy is not available to Plaintiff and is in the exclusive possession of the Defendant. However, every no-fault policy in Florida is required to comply with Florida's No Fault Act and, as a result, the injuries Enrollee sustained and the corresponding medical services and/or supplies are required to be covered primarily by the

[1] In order to ensure that this document is HIPAA compliant, the Defendant's insured, M.M., shall only be referred to as "Enrollee." The name of Enrollee is known to Defendant but is not pled in this Complaint to protect their privacy.

Defendant.

15. Pursuant to Florida law, and to the no-fault insurance contract, Defendant had a legal obligation to make primary payment for all medical services provided to its insured as a result of the Accident, but Defendant failed to satisfy this obligation.

16. At the time of the Accident, Enrollee was also a Member of a MA plan managed by FHCP, which provided medical coverage to Enrollee.

17. Enrollee's Medicare coverage is outlined in an Evidence of Coverage issued by FHCP and provides that the MA Plan's obligations are secondary to other available insurance plans.

18. Enrollee's MA Plan is considered the "secondary plan" in connection with medical expense coverage for the Accident and provides FHCP with reimbursement, recovery and subrogation rights from a "primary plan," Defendant in this instance. These rights are embedded in the EOC and the applicable Florida statutes.

19. FHCP was not primarily responsible for Enrollee's medical expenses because the no-fault insurance policy issued by Defendant was in effect at the time of the Accident and provided for primary coverage for Enrollee's medical expenses. Accordingly, Defendant was primarily liable for the first $10,000.00 in medical services and/or supplies, provided to Enrollee resulting in the use maintenance or operation of a motor vehicle of which Enrollee incurred the medical services and/or supplies.

20. Even though Defendant's no-fault policy was a primary plan obligating Defendant to provide primary coverage for Enrollee's medical treatment as a result of the Accident, FHCP was still charged and paid for said medical expenses incurred by Enrollee.

21. The medical services, procedures, and/or products provided to Enrollee and the

resulting medical bills charged to FHCP, were necessary, related, reasonable, and the result of the medical diagnosis, medical treatment, medical conditions, and/or injuries Enrollee sustained in the Accident.

22. Enrollee's medical providers determined that the medical services and/or supplies were reasonable, related, and necessary to diagnose and treat a mental and/or physical condition of the Enrollee based on the medical provider's training, education, experience, and knowledge.

23. After determining that the medical bills and other charges were for medically necessary procedures and/or services, and in accordance with its "Evidence of Coverage," FHCP discharged its obligation and made payment of all medical bills for the treatment(s) and service(s) rendered to Enrollee, which are related to the Accident.

24. FHCP's payment(s) for Enrollee's medical bills totaled $14,498.00.[2]

25. The medical bills submitted to FHCP for Enrollee's treatment were determined to be "clean claims," meaning that the claims had no defect or impropriety and contained all of the information necessary to determine that the services rendered to Enrollee were medically necessary, related, reasonable and, therefore, required to be paid promptly.

26. As the issuer of the primary plan, Defendant was required to pay for the medical services provided to Enrollee, or to reimburse FHCP for all payments it made on Enrollee's behalf to satisfy such medical bills; however, Defendant failed to do either and continues to do so.

27. A primary plan's failure to pay for medical expenses for which it is responsible, or its failure to reimburse CMS (or an MAO) for any payments made on behalf of a Medicare enrollee beneficiary, vests CMS (and an MAO) with a right to subrogate to any individual against any liable

[2] Although FHCP incurred charges above the $10,000 PIP limit, Plaintiff is *only* seeking to recover up to the PIP policy limit for medical expenses incurred by the Enrollee.

primary plan. *See* 42 C.F.R. § 411.26(a) ("With respect to services for which Medicare paid, CMS is *subrogated* to any individual, provider, supplier, physician, private insurer, State agency, attorney, or any other entity entitled to payment by a primary payer."); *see also* 42 C.F.R. § 411.24(e) ("CMS has a direct right of action to recover from any primary payer.").

28. As a result of Defendant's failure to pay for Enrollee's medical expenses as the primary plan, FHCP and Plaintiff (as its assignee), have the same rights as CMS to pursue recovery of owed reimbursement of any payments made in accordance with the Code of Federal Regulations. *See* 42 C.F.R. § 422.108(f) ("The MA organization will exercise the *same rights* to recover from a primary plan, entity, or individual that the Secretary exercises under the MSP regulations in subparts B through D of part 411 of this chapter.").

29. Therefore, CMS and Plaintiff (as assignee of an MAO) are subrogated to any individual, provider, supplier, physician, private insurer, state agency, attorney, or any other entity entitled to payment from a primary payer.

30. By making payments on Enrollee's behalf, FHCP (and subsequently Plaintiff) subrogated to Enrollee's rights pursuant to FHCP's "Evidence of Coverage," but with the additional rights as a Medicare secondary payer.

31. Neither CMS nor Plaintiff is required to comply with the same contractual requirements as the Enrollee, such as any and all time limits to file claim(s).

32. Upon Defendant's failure to pay as a primary payer for Enrollee's medical bills, Plaintiff vested with the right to bill Defendant directly and recover the owed reimbursements of the payments rendered by FHCP.

33. Plaintiff may seek reimbursement against Defendant directly under the same rights as CMS, *via* the direct rights established by law or, in the alternative, *via* legal theories such as

equitable subrogation and/or as a third-party beneficiary.

34. Pursuant to Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 ("MMSEA"), a responsible reporting entity ("RRE")[3] is required to report its status and responsibility as a primary payer to CMS and/or MAOs, so that an enrollee's Medicare benefits may be properly coordinated.

35. As Defendant is an RRE, it had an affirmative duty to provide notice regarding its primary payment status and responsibility to all entities designated by CMS to receive and process such information, such as FHCP.

36. Defendant failed to report to CMS that Enrollee was a Medicare beneficiary and failed to alert CMS and FHCP that it was the primary payer responsible for Enrollee's medical expenses, which would enable the proper coordination of benefits.

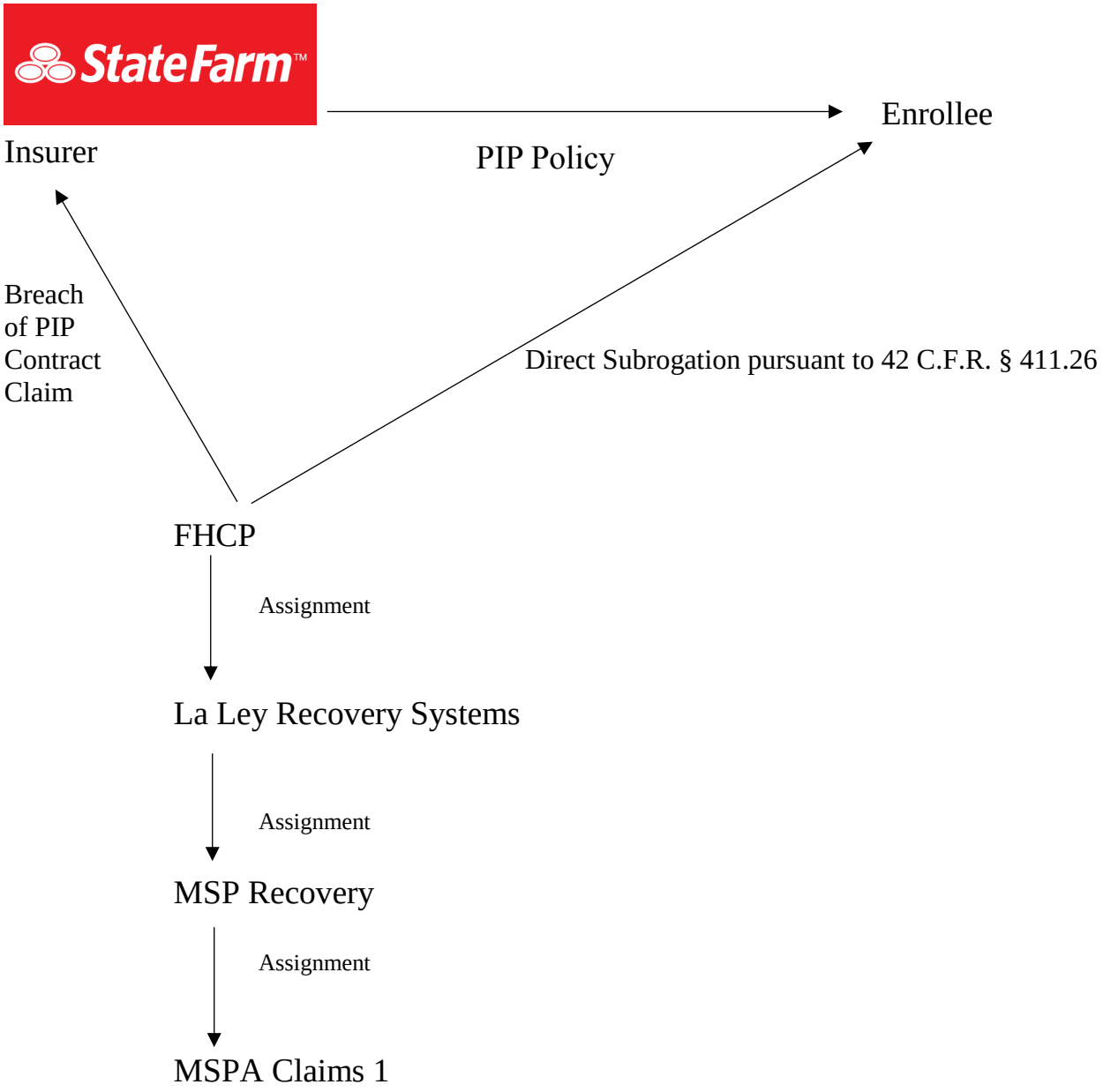
37. Defendant also failed to pay for Enrollee's medical expenses, which forced FHCP, the secondary payer, to make payments on Enrollee's behalf.

IV. STANDING

38. Plaintiff is entitled to bring forth the claims herein by way of subrogation. Subrogation is the substitution of one person in the place of another with reference to a lawful claim or right. *See Dixie Nat'l Bank v. Employers Commercial Union Ins. Co.*, 463 So. 2d. 1147, 1151 (Fla. 1985).

[3] An RRE refers to any (i) liability insurance (including self-insurance); (ii) no-fault insurance; and (iii) workers' compensation laws or plans.

Flow Chart of Relationship Amongst Insurer, Enrollee, FHCP, and Assignees



A. FHCP's Right of Subrogation Under 42 C.F.R. § 411.26(a)

39. An MA plan, like FHCP, "exercise[s] the same rights to recover from a primary plan, entity or individual that the [CMS] exercises under the MSP regulations." *See* 42 C.F.R. § 422.108(f).

40. As such, once FHCP provides payments in situations where it is deemed a

secondary payer, FHCP is automatically subrogated the right to recover reimbursement from the primary plan. *See* 42 C.F.R. § 411.26(a) ("With respect to services for which Medicare paid, [FHCP] is subrogated to any individual, provide, supplier, physician, private insurer, State agency, attorney, or any other entity entitled to payment by a primary payer.").

41. FHCP has a direct statutory and regulatory right of action to recover from any primary plan, such as Defendant. *See* 42 C.F.R. § 411.24(e) ("Recovery from primary payers. [FHCP] has a direct right of action to recover from any primary payer.").

42. Accordingly, FHCP has standing to assert its subrogation rights against Defendant, the primary payer in this instance.

B. FHCP's Conventional and Equitable Subrogation Rights

43. At all relevant periods, FHCP provided health insurance, health maintenance organization plans, and third-party administration services to groups and individuals, such as Enrollee.

44. FHCP is entitled to the reimbursement of Medicare benefits it provided on Enrollee's behalf as a proximate result of the Accident, as set forth below.

45. FHCP provided these and other benefits to the Enrollee, pursuant to its obligations in the Evidence of Coverage, which specifically grants FHCP broad subrogation and reimbursement rights.

46. FHCP's Evidence of Coverage provides as follows:

> [w]e have the right and responsibility to collect for covered Medicare services for which Medicare is not the primary payer. According to CMS regulations at 42 CFR sections 422.108 and 423.462, [HMO], as a Medicare Advantage Organization, will **exercise the same rights of recovery** that the Secretary exercises under CMS regulations in subparts B through D of part 411 of 42 CFR and the rules established in this section supersede any State laws.

(emphasis added).

47. FHCP has rights of subrogation and reimbursement against any primary payer(s) to recover damages provided on an enrollee's behalf, when the primary payer was responsible to tender payment for such medical expenses.

48. In accordance with the applicable MA plan and Evidence of Coverage, FHCP provided Medicare benefits for necessary, reasonable, and related medical services rendered to Enrollee because of the Accident, as defined below.

49. FHCP, as a secondary payer, completely satisfied all of the medical bills for Enrollee's medical treatment.

50. All payments processed and made by FHCP were subject to reimbursement from Defendant, the primary plan/payer.

51. Subrogation would not result in any injustice to the rights of Defendant.

52. FHCP and Plaintiff, by assignment, stand in the shoes of Enrollee to recover payments processed on Enrollee's behalf by operation of law.

C. Assignments

i. FHCP-La Ley Recovery Assignment Agreement

53. On April 15, 2014, FHCP assigned all of its aforementioned subrogation claims, recovery, and reimbursement rights against any liable primary payer, including Defendant, to La Ley Recovery Systems, Inc. ("La Ley Recovery") ("FHCP-La Ley Recovery Assignment Agreement"), divesting FHCP of all of its rights, title and interest in its recoveries. [*See* Exhibit A, *FHCP-La Ley Recovery Assignment Agreement*].

54. Section 1.1 of the FHCP-La Ley Recovery Assignment Agreement between FHCP and La Ley Recovery, as identified in paragraph 53 herein, provides as follows:

> [i]t is the intent of the parties to assist each other in the implementation of a system whereby [FHCP] and/or any entity it has contracted to recover, shift and/or bill on a service for all medical services and/or medications, diagnostic test or any amount it is obligated to pay to/or on behalf of any member or other liability that can be legally collected through an assignment of any kind and/or through Medicare and/or Medicaid rights and/or by State and/or Federal statute of any kind and/or any right of any nature whatsoever that exists now or in the future. By way of this agreement, [FHCP] appoints, directs, and otherwise assigns all of [FHCP's] rights as it pertains to the rights pursuant to any plan, State or Federal statute whatsoever directly and/or indirectly for any its members and/or plan participants.

[Exhibit A, *FHCP-La Ley Recovery Assignment Agreement § 1.1*].

55. In addition to the catch-all provision quoted in Paragraph 54, Section 1.1 of the FHCP-La Ley Recovery Assignment Agreement includes "[b]y illustration but not by limitation" the following examples of recoveries permitted by the assignment:

a. Personal Injury Protection payments of any state of any kind;
b. Workman's Compensation benefits of any state of any kind;
c. Any claim for medical payment due any member of any nature through an insurance or self-insured;
d. Any third party claim by a member which [FHCP] may have the right to subrogate;
e. Any claim involving intentional tort, negligent commission and/or omission, a product liability claim for which a member has received Medical treatment paid for by Client;
f. Any and all medical care treatments, diagnostics and/or supplies that a member received and/or can receive that can be collected from any source that is primarily responsible as Medicare and/or Medicaid are payors of last resort.

[Exhibit A, *FHCP-La Ley Recovery Assignment Agreement § 1.1*].

56. In Article III of the FHCP-La Ley Recovery Assignment Agreement, FHCP permitted La Ley Recovery to contract with Plaintiff to collect on any subrogation claim, which states as follows:

> [FHCP] agrees that La Ley Recovery, at its discretion may contract law firms, lawyers, experts, investigators, claims specialists to collect on any claim(s), subrogation amounts or any other amounts recoverable pursuant to the terms of this agreement.

[Exhibit A, *FHCP-La Ley Recovery Assignment Agreement Article III*].

ii. FHCP Approves the La Ley Recovery – MSP Recovery Assignment Agreement

57. In compliance with Section 1.2 of the FHCP-La Ley Recovery Assignment Agreement which states "La Ley Recovery may assign the Agreement in whole or in part but the assignee must be approved by the Client," FHCP executives and officers, including Susan Molina and Arisay Martinez, among others, communicated to La Ley Recovery via a series of communications between April and August 2014 that FHCP accepted, acknowledged, approved and consented to any subsequent assignment from La Ley Recovery to any entity designated by La Ley Recovery as an assignee. Even though the Agreement only requires approval from the entire agreement and not assignment of the claims, FHCP indeed approved the assignment of claims from La Ley Recovery to MSP Recovery, LLC.

iii. La Ley Recovery Systems, Inc.- MSP Recovery, LLC. Assignment Agreement

58. On August 5, 2014, La Ley Recovery assigned all of the rights obtained from FHCP, specifically as it relates to the recovery of claims of Enrollee. [*See* Exhibit B, *La Ley Recovery-MSP Recovery, LLC Assignment Agreement*]. That assignment agreement indicates as follows:

> LA LEY RECOVERY SYSTEMS, INC. ("La Ley Recovery Systems"), for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does by these presents, assign, sell, transfer, convey, and set over to MSP RECOVERY, LLC., ("Assignee"), its successors and assigns, all rights, title and interest in and to the agreement, (the "Agreement") entered by and between La Ley Recovery Systems and Florida Healthcare Plus, Inc., on April 14th, 2014, as it relates to the recovery of claims of member, M.M., and related documents evidencing a security interest, liens or other security interests or encumbrances executed, filed and/or created in conjunction with collateral securing the Agreement. This Assignment is made without recourse or warranty except as referred to herein. The assignor has assigned this claims(s), pursuant to the underlying agreement but also assigns all causes of action to Assignee as it relates to M.M. This assignment shall encompass all of the rights from La Ley Recovery Systems and/or FCHP assigned to La Ley Recovery Systems by that Agreement dated on April 14th, 2014.

iv. FHCP Receivership Proceedings

59. After FHCP and La Ley Recovery entered into the FHCP-La Ley Recovery Assignment Agreement, FHCP was placed into Receivership Proceedings in Leon County, Florida. Pursuant to a Liquation Order, the Florida Department of Financial Services (the "Department") was appointed as Receiver for FHCP effective January 1, 2015 and, thus, stepped into the shoes of FHCP to make any decisions based on the interests of FHCP, including the authorization to consent, agree, or, otherwise, affirm any agreements entered into or extended by FHCP and other related entities, such as Plaintiff.

60. Subsequent the appointment of the Department as the receiver, the Department was aware of all claims processed by Plaintiff and collected on numerous claims until the date of the Settlement Agreement,[4] where it collected an additional lump-sum payment from Plaintiff. All payments collected were on claims that were sued upon by Plaintiff or, otherwise, processed by Plaintiff, as assignee asserting an MA lien. The Department in all respects collected and, thereby, waived any right to object to its approval even if one was necessary by its actions, as well as collected on claims. The Department never refused payments and was fully aware of all of Plaintiff's actions.

v. MSP Recovery, LLC-MSPA Claims 1, LLC Assignment Agreement

61. On November 17, 2015, MSP Recovery, LLC. assigned all of the rights obtained from La Ley Recovery Systems, Inc. to Plaintiff, specifically as it relates to the recovery of claims of Enrollee. [*See* Exhibit C, *MSP Recovery, LLC- MSPA Claims 1, LLC Assignment Agreement*]. That assignment agreement indicates as follows:

> MSP RECOVERY, LLC. ("Assignor"), for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, the receipt of which is

[4] As more fully described in Paragraph 63.

> hereby acknowledged, does by these presents, assigns, sells, transfers, conveys, and sets over to MSPA CLAIMS 1, LLC, ("Assignee"), its successors and assignees, all rights, title and interest in and to the agreement and/or assignment Assignor entered into with La Ley Recovery Systems, Inc. ("La Ley Recovery") to recover any and all claims related documents evidencing a security interest, liens or other security interests or encumbrances executed, filed and/or created in conjunction with collateral securing the Agreement (the "Agreement") La Ley Recovery received from Florida Healthcare Plus ("FHCP") on April 14th, 2014 whereby FHCP is deemed to be secondary payer pursuant to 42 U.S.C. § 1395y(b)(3)(A), specifically the claim of M.M. This Assignment is made without recourse or warranty except as referred to herein. The assignor has assigned this claim(s), pursuant to the underlying agreement but also assigns all causes of action to Assignee. As such, Assignee is the proper holder of the recovery rights of any and all claims, including the claim of M.M., whereby FHCP is deemed to be a secondary payer pursuant to 421 U.S.C. § 1395y(b)(3)(A).

vi. The Department Further Affirms the Validity of the (1) La Ley Recovery–MSP Recovery LLC Assignment Agreement, and (2) MSP Recovery LLC-MSPA Claims 1 Assignment Agreement

62. On June 1, 2016, the Department, acting in its capacity as receiver for FHCP, entered into a settlement agreement ("Settlement Agreement") with La Ley Recovery Systems Inc., La Ley Recovery Systems – FHCP, Inc., MSP Recovery LLC, MSP Recovery Services, LLC, and MSPA Claims 1, LLC (collectively referred to as "La Ley Companies"). [*See* Exhibit D, *Settlement Agreement*].

63. In the Settlement Agreement, the Department acknowledged and agreed to the terms and conditions of the FHCP-La Ley Recovery Assignment Agreement, which was executed by and between FHCP and La Ley Recovery and, in pertinent part, states as follows:

> WHEREAS, on April 15, 2014, La Ley entered into a Cost Recovery Agreement with Florida Healthcare Plus, Inc. ("FHCP") under which FHCP assigned all rights, titled and interest held by FHCP to certain recoveries related to accidents or incidents recoverable pursuant to the Medicare Secondary Payer Act, the Medicaid Third Party Liability Act, and/or applicable Federal and State subrogation laws (the "Initial Agreement") . . .
>
> **2. Assignment of Claims and Recoveries**. Receiver acknowledges and agrees that the terms and conditions of the Initial Agreement, to the extent such terms and conditions do not conflict with the terms and conditions of this Settlement

> Agreement, shall remain in full force and effect from April 15, 2014 until the Effective Date of this Settlement Agreement.
>
> > a. Receiver hereby agrees the Receiver shall not object to, or seek to terminate for any reason, the Initial Agreement, and expressly acknowledges and agrees that as of the execution of the Initial Agreement, all rights, title, and interest held by FHCP to recoveries, including any rights, title and interest assigned to FHCP pursuant to contractual agreements with FHCP members, related to accidents or incidents recoverable pursuant to the Medicare Secondary Payer Act, the Medicaid Third Party Liability Act, and/or any other applicable Federal or State subrogation laws, and rights, title and interest to recover payments made by FHCP on behalf of FHCP members pursuant to various legal theories related to accidents or incidents recoverable pursuant to the Medicare Secondary Payer Act, the Medicaid Third Party Liability Act, and/or any other applicable Federal or State subrogation laws **("Assigned Claims") were and continue to be irrevocably assigned to La Ley.**

[Exhibit D, *§§ Recitals, 2(a)*].

64. The Department affirmed La Ley Recovery's right to assign ***any and all*** claims of the FHCP-La Ley Recovery Assignment Agreement to any of the La Ley Companies.

65. Additionally, the Department affirmed the MSP Recovery LLC-MSPA Claims 1 Assignment Agreement. Pursuant to the Settlement Agreement, the Department explicitly states that:

> **Assignment.** The Parties agree that prior to payment of the Final Settlement Payment described herein, the Parties shall not assign this Settlement Agreement, directly or indirectly, in whole or in part, without prior written approval of the other Party; provided, however, that the he Assigned Claims may be assigned by and among any of the companies collectively referred to herein as "La Ley," and **the Receiver acknowledges that any assignment of the rights described hereunder by or among those companies collectively referred to as "La Ley" occurring prior to the execution of this Settlement Agreement shall be valid and enforceable**.

[Exhibit D, § 20] (emphasis added).

66. On June 14, 2016, the Leon County Circuit Court approved the terms of the Settlement Agreement, specifically finding "that the Settlement Agreement was negotiated in good

faith and is in the best interest of Florida Healthcare Plus, Inc.," and the Leon County Circuit Court further retained jurisdiction to enforce the terms of the Settlement Agreement. [Exhibit E, *Leon County Circuit Court Order Approving Settlement*].

67. The Leon County Circuit Court further approved the Settlement Agreement based upon the Department's audit of La Ley Recovery's system and methodologies, in which it explained, in pertinent part, that: "[s]ubject to this Court's approval, and based upon the rationale set forth in the agreement, including the [Department's] audit of La Ley's system and methodologies." [Exhibit E, *Leon County Circuit Court Order Approving Settlement*].

68. Accordingly, Plaintiff possesses all of FHCP's subrogation rights to pursue and recover all medical claims, bills, and expenses FHCP provided on behalf of its MA Enrollee from and against any liable primary payer, including Defendant pursuant to the rights transferred from FHCP and the express affirmations provided by the Department as receiver for FHCP.

V. CLASS REPRESENTATION ALLEGATIONS

69. Pursuant to Florida Rule of Civil Procedure 1.220, Plaintiff brings this suit both individually, and on behalf of a Florida class of similarly situated MAOs. The Class includes entities that:

> contracted directly with CMS and/or its assignee pursuant to Medicare Part C including, but not limited to, MAOs, and other similar entities, to provide Medicare benefits through a Medicare Advantage plan to Medicare beneficiaries for medical services, treatment, and/or supplies as required and regulated by CMS and HHS, all of which pertain to the same medical services and/or supplies that were the primary obligation of the Defendant;
>
> have made payment(s) of benefits, services, and/or supplies whereby the MAO, as a secondary payer, has the direct right and responsibility to collect for covered Medicare services, for which the Defendant, as the primary payer pursuant to Defendant's contract covering the Medicare enrollee and Florida no-fault law (Section 627.736(4), Florida Statutes), was/is financially responsible to a Medicare beneficiary; and

have not been reimbursed by Defendant pursuant to the recognized Current Procedure Terminology codes based on the fee-for-service by the primary payer, as delineated by Section 627.736, Florida Statues, for medical services and/or supplies for their damages.[5]

70. The Class includes, but is not limited to, the entities identified and listed in *Exhibit "F,"* attached hereto and incorporated herein by reference.

A. Commonality

71. This is an action whereby FHCP and the Class are subrogated and, otherwise, entitled to reimbursement for the payments made at fee-for-service rates, and as more fully delineated by section 627.736, Florida Statutes. The same common source[6] caused the harm suffered by Plaintiff and the Class.

72. Numerous questions of law and fact are common to the claims of Plaintiff and the members of the Class. Among these questions of law and fact are:

a. Whether Plaintiff and the Class made payment(s) of Medicare benefits for which Defendant, as a no-fault insurance carrier, was responsible as a primary payer;

b. Whether Defendant is the primary payer responsible to pay for Enrollee's medical expenses pursuant to its contractual obligations and Florida no-fault law;

c. Whether the Enrollee received emergency services and/or hospital inpatient services and/or other medical treatment or supplies as a result of the use, maintenance or operation of a motor vehicle that rendered Defendant primarily responsible to satisfy such expenses, before Plaintiff and the Class were obligated to make secondary payments on behalf of the enrollee;

d. Whether Defendant, as Enrollee's no-fault PIP insurer, is required to reimburse Plaintiff, as the secondary payer, the amount tendered as payment(s) in satisfaction of the medical expenses incurred during Enrollee's emergency/in-

[5] The Class entities have not otherwise released their right to reimbursement as secondary payers.

[6] *i.e.*, Defendant's failure to primarily tender payment for an enrollee's medical bills, and Defendant's subsequent failure to reimburse Plaintiff, or other Class Members, for the payment(s) made on behalf of an enrollee, for which Defendant was legally obligated as the primary payer.

patient medical treatment(s), service(s) and/or any other payment(s) tendered by Plaintiff, to which Defendant was primarily responsible to pay pursuant to its contractual and statutory obligations;

e. Whether federal law preempts state law and/or any defenses Defendant might raise, which might conflict with the statutory and regulatory provisions that render CMS and MAOs not responsible for payment of medical services and/or supplies, where a primary payer, like Defendant, exists; and
f. Whether Plaintiff and the Class are authorized to recover the full charged amount from Defendant, as provided in Section 627.736, Florida Statutes.

73. The damages suffered by Plaintiff and the Class Members, were directly and proximately caused by the acts and/or omissions of Defendant, or those under the Defendant's direction, control, or supervision.

B. Typicality

74. Both Plaintiff's and the Class Member's claims are typical since all have been damaged legally and/or equitably in the same manner, and Plaintiff asserts the same legal theories of recovery advanced by the Class.

75. Plaintiff's claims are typical of the class members' claims because Defendant failed to reimburse Medicare secondary payers for the payments tendered on behalf of the enrollees in satisfaction of the medical expenses incurred by same. Plaintiff seeks to recover its owed reimbursement, in other words, the payments that Defendant was primarily obligated to provide pursuant to its no-fault insurance policy and/or section 627.736 of the Florida Statutes, yet failed to.

76. Plaintiff's claims are predicated on the same statutes, regulations and legal theories and can be proven through class-wide proofs. The facts involving Defendant's practices, actions or omissions are similar with respect to Plaintiff and the Class Members and as such, Defendant's legal defenses are the same for all claims.

77. Defendant, the primary payer, failed to promptly satisfy the enrollees' medical

expenses and thereafter failed to appropriately reimburse the Medicare secondary payers, such as Plaintiff and the Class Members, in violation of these Medicare secondary payers' rights.

78. The core issues that predominate over all other issues in this litigation is Defendant's failure to properly satisfy its obligations in accordance with its policy of insurance and in violation of section 627.736 of the Florida Statutes, as well as its obligation to reimburse any secondary payers that tendered payment(s) on behalf of the enrollees.

C. Numerosity

79. The Class is so numerous that joinder of all members is impracticable.

80. The Class is, upon information and belief, comprised of more than twenty-five (25) but less than fifty (50) entries or their assignees, which includes entities that:

> contracted directly with CMS and/or its assignee pursuant to Medicare Part C including, but not limited to, MAOs, and other similar entities, to provide Medicare benefits through a Medicare Advantage plan to Medicare beneficiaries for medical services, treatment, and/or supplies as required and regulated by CMS and HHS, all of which pertain to the same medical services and/or supplies that were the primary obligation of the Defendant;
>
> have made payment(s) of benefits, services, and/or supplies whereby the MAO, as a secondary payer, has the direct right and responsibility to collect for covered Medicare services, for which the Defendant, as the primary payer pursuant to Defendant's contract covering the Medicare enrollee and Florida no-fault law (section 627.736(4) of the Florida Statutes), was/is financially responsible to a Medicare beneficiary; and
>
> have not been reimbursed by Defendant pursuant to the recognized Current Procedure Terminology codes based on the fee-for-service by the primary payer, as delineated by section 627.736 of the Florida Statues, for medical services and/or supplies for their damages.[7]

D. Adequacy of Representation

81. Plaintiff is an adequate representative of the Class, as Plaintiff will fairly and

[7] The Class entities have not otherwise released their right to reimbursement as secondary payers.

adequately protect the interests and claims of all Class Members. Plaintiff, as a member of the Class (as defined herein), is committed to the vigorous prosecution of this action, and retained competent counsel experienced in litigation of this nature. There is no hostility of interests between Plaintiff and the Class Members. Plaintiff anticipates no difficulty in the management of this litigation as a class action. Plaintiff has no claims that are antagonistic to the claims of the Class Members and/or the claims it seeks to represent.

82. To prosecute this case, Plaintiff has retained John H. Ruiz, Frank C. Quesada, and the MSP Recovery Law Firm. John H. Ruiz has served as lead class counsel for numerous class action cases presiding in both state and federal courts. In addition to being involved in these types of cases, John H. Ruiz handles other complex litigation matters, including trials. Specifically, John H. Ruiz and Frank C. Quesada have the experience and financial ability to prosecute this case. John H. Ruiz has successfully certified numerous no-fault cases affirmed on appeal by the Florida Third District Court of Appeals, a substantial number of which received final settlement approval as being fair, reasonable, and adequate to class members.

VI. REQUIREMENTS OF FLA. R. CIV. P. 1.220(b)

83. This action is maintainable pursuant to Florida Rules of Civil Procedure 1.220 (b)(1)(A) and (b)(3).

84. As a result of Defendant's wrongful conduct and uniformity in the manner of injury sustained and legal issues presented, a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Individual joinder of each member of the Class is impractical, if not impossible. The prosecution of separate claims by individual members of the Class would create a risk of inconsistent or varying adjudications concerning individual members of the Class, which would establish incompatible standards of conduct for Defendant. Furthermore, the

burden of this Court of handling several thousand individual cases arising from the same nucleus of operative facts would be excessive and burdensome. Individual litigation would also increase the expense and burden of the litigation to all parties and to the court system. A class action will concentrate all of the litigation in one forum with no unusual manageability problems, particularly in this case where Defendant's liability and the nature of the Class Members' damages may be readily proven through common class-wide proofs.

85. Defendant, its officers, directors, subsidiaries, or any other person or other entity related to, affiliated with or employed by Defendant, is excluded from the proposed Class.

86. The damages caused to Plaintiff, as well as the damage sustained by each Class Member, have been directly and proximately caused by the acts and/or omissions of Defendant, or those under the direction, control, and/or supervision of Defendant.

87. Additionally, Defendant has acted on grounds generally applicable to Plaintiff and all members of the Class.

88. Defendant damaged Plaintiff and the Class Members, as a direct and proximate result of Defendant's acts and/or omissions.

VII. CAUSES OF ACTION

COUNT I
Breach of Contract for Failure to Pay PIP Benefits

Plaintiff hereby incorporates by reference the allegations of paragraphs one (1) through eighty-eight (88) above as if fully set forth herein, and further alleges:

89. CMS and MAOs (*i.e.*, FHCP) have a direct right of action to recover from primary plans, such as Defendant, for any Medicare benefits provided to an enrollee whereby original Medicare was a secondary payer.

90. Like CMS, FHCP is subrogated the right to recover from Defendant, the primary

plan, due to its failure to provide primary payment for Enrollee's medical treatment.

91. Plaintiff, as assignee to FHCP, is pursuing reimbursement of the payment(s) rendered on Enrollee's behalf, under its own right to be reimbursed.

92. Plaintiff made a claim under the insurance policy issued by Defendant seeking PIP benefits for services provided to Enrollee. Plaintiff complied with any and all conditions precedent to the institution of this action to the extent applicable.

93. Defendant failed and/or refused to make complete payments of the No-Fault benefits as required by section 627.736 of the Florida Statutes.

94. Defendant failed to pay Enrollee's covered losses and Defendant had no reasonable proof to establish that it was not responsible for the payment.

95. Defendant's failure to pay the medical services and supplies damaged Plaintiff as set forth herein.

96. FHCP processed payment in the amount of $14,498.00, pursuant to its agreement with CMS and the provider of services, for the Enrollee's reasonable and necessary medical expenses related to the automobile accident.

97. Plaintiff provided Medicare benefits and seeks to recover the full amount due under the PIP policy, $10,000.00.

WHEREFORE, Plaintiff demands judgment for itself, plus all members of the class, against Defendant for damages, reasonable attorney's fees pursuant to section 627.428 of the Florida Statutes, court costs, interests, and such other and further relief as this Court deems just and proper.

COUNT II
Breach of Contract for Failure to Pay PIP Benefits
[Conventional Subrogation]

Plaintiff hereby incorporates by reference the allegations of paragraphs one (1) through eighty-eight (88) above as if fully set forth herein, and further alleges:

98. At the time of the Accident, Defendant maintained an insurance contract with the Enrollee. A copy of this policy is in the exclusive possession of the Defendant.

99. Plaintiff made a claim under the insurance policy issued by the Defendant wherein Plaintiff sought PIP benefits for the services provided to Enrollee. Otherwise, Plaintiff complied with any and all conditions precedent prior to the institution of this action.

100. Defendant failed and/or refused to make complete payments of the No-Fault benefits as required by section 627.736 of the Florida Statutes.

101. Defendant failed to pay Enrollee's covered losses and Defendant had no reasonable proof to establish that it was not responsible for the payment.

102. Defendant's failure to pay for the medical services and supplies provided to Enrollee damaged Plaintiff as set forth herein.

103. FHCP processed payment in the amount of $14,498.00, pursuant to its agreement with CMS and the provider of services, for the Enrollee's reasonable and necessary medical expenses related to the automobile accident.

104. Plaintiff provided Medicare benefits and seeks to recover the full amount due under the PIP policy, $10,000.00.

WHEREFORE, Plaintiff demands judgment for itself, plus all members of the class, against Defendant for damages, reasonable attorney's fees pursuant to section 627.428 of the Florida Statutes, court costs, interests, and such other and further relief as this Court deems just

and proper.

COUNT III
Breach of Contract for Failure to Pay PIP Benefits
[or in the alternative, Equitable Subrogation]

Plaintiff hereby incorporates by reference the allegations of paragraphs one (1) through eighty-eight (88) above as if fully set forth herein, and further alleges:

105. Plaintiff made a claim under the insurance policy issued by the Defendant seeking PIP benefits for services provided to the Enrollee. Plaintiff otherwise complied with all conditions precedent prior to the institution of this action.

106. FHCP provided full payment for Enrollee's medical expenses even though it was not primarily liable for the medical expenses, as there was a no-fault insurance policy in effect at the time of the Accident issued by the Defendant, which provided primary coverage for the Enrollee's medical expenses.

107. Defendant failed and/or refused to make complete payments of the No-Fault benefits as required by section 627.736 of the Florida Statutes.

108. Defendant failed to pay Enrollee's covered losses and Defendant had no reasonable proof to establish that it was not responsible for the payment.

109. Defendant's failure to pay the medical services and supplies damaged Plaintiff as set forth herein.

110. FHCP processed payment in the amount of $14,498.00, pursuant to its agreement with CMS and the provider of services, for the Enrollee's reasonable and necessary medical expenses related to the automobile accident.

111. Plaintiff provided Medicare benefits and seeks to recover the full amount due under the PIP policy, $10,000.00.

WHEREFORE, Plaintiff demands judgment for itself, plus all members of the class, against Defendant for damages, reasonable attorney's fees pursuant to section 627.428 of the Florida Statutes, court costs, interests, and such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all issues so triable.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was sent via Electronic Service this 12th day of September, 2016 to: **Valerie Greenberg, Esq.**, *Akerman LLP*, Attorneys for Defendant, at E-mail: valerie.greenberg@akerman.com; marcy.aldrich@akerman.com; stacy.rodriguez@akerman.com; debra.atkinson@akerman.com.

Respectfully submitted,

MSP RECOVERY LAW FIRM
5000 SW 75 Avenue, Suite 400
Miami, Florida 33155
Phone: (305) 614-2222
Serve: serve@msprecovery.com

By: /s/ *Frank C. Quesada*
Frank C. Quesada, Fla. Bar No. 29411
John H. Ruiz, Esq., FL Bar No. 928150

EXHIBIT A

LA LEY RECOVERY SYSTEMS AGREEMENT

THIS COST RECOVERY AGREEMENT is made this 15th day of APRIL, 20 14, by and between **FLORIDA HEALTHCARE PLUS**("Client") and **LA LEY RECOVERY SYSTEMS INC**, a Florida Corporation ("**La Ley Recovery** ")

WITNESSETH:

WHEREAS, Client operates a health maintenance organization that provides or arranges managed healthcare to and for the benefit of insureds and other persons.

WHEREAS, La Ley Recovery has expertise in the ability to recover costs already paid for and/or generate revenue on a fee for services provided and/or shift current expenses incurred.

NOW THEREFORE, for and in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

1.1 **Contractor Relationship:** Client hereby retains **La Ley Recovery** as an independent contractor to recover costs already paid for and/or generate revenue on a fee for services provided and/or shift current expenses incurred for Client's insureds and/or members that have been involved in accidents and/or have Workers Compensation claims and/or any other incident/accident or for medical services of any kind whereby Client may either bill for services or recover for payment of medical services. The relationship between **La Ley Recovery** and Client shall be solely as set forth herein. Neither party shall be deemed the employee, agent, partner or joint venturer of the other, nor have, or represent to have any authority or capacity to make or alter any Agreement on behalf of the other, to legally bind the other, or to do any other thing on behalf of the other except as specifically set forth herein. Neither **La Ley Recovery** nor Client will have or attempt to exercise any control or direction over the methods used by the other to perform its work, duties and obligations under this Agreement except as set forth herein. The respective employees, agents and representatives of each of **La Ley Recovery** and Client shall remain their own employees, agents or representatives, and shall not be entitled to employment benefits of any kind from the other. **La Ley Recovery** and Client each assume full responsibility for their own compliance with any and all applicable laws, ordinances, rules and regulations. La Ley Recovery shall be responsible for the act of attorney agents, specialists, investigators, experts or other parties as noted in Article I

It is the intent of the parties to assist each other in the implementation of a system whereby Client and/or any entity it has contracted to recover, shift and/or bill on a fee for service for all medical services and/or medications, diagnostic test or any amount it is obligated to pay to/or on behalf of any member or other liability that can be legally collected directly through an assignment of any kind and/or through Medicare and/or Medicaid rights and/or by State and/or Federal statute of any kind and/or any other right of any nature whatsoever that exists now or in the future. By way of this agreement, Client appoints, directs and otherwise

assigns all of Client's rights as it pertains to the rights pursuant to any plan, State or Federal statute whatsoever directly and/or indirectly for any its members and/or plan participants. The parties agree that any rights conferred to Client by Medicare Advantage plans either by statute, contract and/or any other reason whatsoever will be administered by **La Ley Recovery** so long as it falls outside a payment(s) that are required to be made by Client pursuant to Medicare and/or Medicaid mandated payments(s)

By illustration but not by limitation, the following list is intended for **La Ley Recovery** to manage and collect: (these categories are for claims already paid or to be recovered)

1. Personal Injury Protection payments of any state of any kind
2. Workman's Compensation benefits of any state of any kind
3. Any claim for medical payment due any member of any nature through an insurance or self insured
4. Any third party claim by a member which the Client may have the right to subrogate
5. Any claim involving intentional tort, negligent commission and/or omission, a product liability claim for which a member has received Medical treatment paid for by Client.
6. Any and all medical care treatments, diagnostics and/or supplies that a member received and/or can receive that can be collected from any source that is primarily responsible as Medicare and/or Medicaid are payors of last resort.

1.2 **Term:** The term of this Agreement shall be for one (1) year from the date of execution herewith, with an automatic renewal for an additional one (1) year period unless terminated at any time by the parties with ninety (90) day prior written notification. La Ley Recovery may assign the Agreement in whole or in part but the assignee must be approved by the Client

1.3 **Proprietary Information:** In recognition of the proprietary interests of each of **La Ley Recovery** and the Client in their respective business operations, **La Ley Recovery** and Client each acknowledge the confidential nature of their relationship and any information or data relating to the business operations, systems, components, customers, prices, methods, plans, programs, results or other know-how of the other (collectively, "Trade Secrets") and each agrees to preserve the confidential nature of these relationships (1) by using and retaining the Trade Secrets of the other in trust and confidence, only for its own internal use and not in any way in competition with the other, (2) by not copying (except for internal use), altering, disassembling, or otherwise changing, in any manner whatsoever, the Trade Secrets of the other, (3) by not disclosing any Trade Secrets of the other to, or permitting the use of any Trade Secrets of the other by, any unauthorized persons. Parties also agree to comply with all HIPPA laws and sign a Florida Helathcare Plus Business Associate Agreement.

1.4 **Representation of the Parties:** Each party hereto represents, warrants and covenants as of the date hereof and throughout the term of this Agreement that each, and each of their Subsidiaries is and will remain duly organized, validly existing and in good standing under the laws of the State where it was formed and any other state to which it is subject, has and will retain the requisite power and authority to conduct its business, to enter into this

Agreement on behalf of itself and its Subsidiaries and to perform the terms hereof and by proper action has duly authorized, executed and delivered this Agreement and any and all instruments in connection herewith on behalf of itself and its Subsidiaries.

ARTICLE II

1.5 La Ley Recovery agrees to make any and all records and reports of the company and subcontractors available for inspection by the auditors of FHCP, The CMS, The Florida OIR, Florida AHCA or any other party a needed by FHLP in the normal course of business.

II. **Representation, Investigation and Litigations Costs:** The costs are separate and apart from the fee charged by **La Ley Recovery.** Costs include, but are not limited to, filing fees, expert witness fees, deposition fees, witness fees, court reporter fees, long distance telephone charges, photocopy charges, etc. **La Ley Recovery** , will pay these costs up front, however, once there is a settlement and/or judgment amount, then the **La Ley Recovery** , may retain and deduct its costs advanced herein provided, prior to disbursing to me/us the amounts to which we are due from said settlement or judgment. A closing statement will be provided with provided with full details of the costs and the amount obtained. Client will not be responsible for any fees in excess of recoveries.

ARTICLE III

III. **Compensation for La Ley Recovery Systems:** As compensation for its services, the client agrees to pay the **La Ley Recovery** , from the gross proceeds of recovery, the following appropriate fee:

i. Any claims collected without the need for lawsuits are to be distributed as follows:

a. 50% **La Ley Recovery** and 50% the Client, with the **La Ley Recovery** advancing the costs of litigation. All costs of litigation will be recovered by the party advancing the costs.

ii. Any claims collected with the need for a lawsuit are to be distributed as follows:

a. 50% **La Ley Recovery** and 50% the Client, with **La Ley Recovery** advancing the costs of litigation. All costs of litigation will be recovered to any party advancing the costs.

It is agreed and understood that this agreement is upon a contingency fee basis, and if no recovery is made, the client will not be indebted to the La Ley Recovery for fees. Client will not be responsible for any fees in excess of recoveries.

Once there is a settlement and/or judgment amount, then **La Ley Recovery** may retain and deduct its percentage of fees plus costs advanced herein provided, prior to disbursing to Client the amounts to which it is due from said settlement or judgment.

Client agrees that **La Ley Recovery**, at its discretion may contract law firms, lawyers, experts, investigators, claims specialists to collect on any claim(s), subrogation amounts or any other amounts that are recoverable pursuant to the terms of this agreement. The agreement between **La Ley Recovery** and all lawyers shall primarily rely on fee shifting statutes; however, any compensation not covered by a fee shifting statute(s) shall be paid first prior to any split as itemized in III (i) and (ii). La Ley Recovery shall be fully responsible for the actions of these parties inclusing all HIPPA and related laws.

ARTICLE IV

4.1 **Settlements:** Any and all amounts received by **La Ley Recovery** will be reported to Client on a weekly basis via automatic electronic information. Client shall designate an electronic email address to report activity. All payments shall be received by **La Ley Recovery** and segregated into an account titled **La Ley Recovery** Systems/Florida Healthcare Plus. Client shall have the right to audit the account upon reasonable notice. Client shall receive payments by the 10th of each month for the prior month's activity of all cleared funds minus any costs incurred for any claims and/or expenses during the prior month. Only Officers and/or agents of the La Ley shall have signature on the account.

4.2. **Closing Statement:** In the event there is a recovery, upon conclusion of the representation, **La Ley Recovery** shall prepare a closing statement reflecting an itemization of all costs and expenses, together with the amount of fee received. **La Ley Recovery** and the Client shall receive a copy of the closing statement. **La Ley Recovery** shall retain a copy of this contract and any closing statements for six years after execution of the closing statement, during such period the Client has the right to inspect these documents at reasonable times and upon reasonable notice.

ARTICLE V

5.1 **Default:** Failure of either party to perform any other covenant, condition, Agreement or provision contained herein within thirty (30) days (or such lesser time as may be otherwise set forth in this Agreement) after receipt by such party of written notice of such failure or, in the event, such failure cannot reasonably be cured within such thirty (30) days, failure to diligently and reasonably pursue the cure thereof within such time frame.

5.2 **Remedies:** Upon the occurrence and continuance of a Default and subject to the limitations and waivers otherwise set forth herein, the party not in Default may, at its option and without any obligation to do so and in addition to any other remedies otherwise set forth in this Agreement, elect any one or more the following remedies: (i) Performance. Withhold performance of any obligation, including payment obligations, under this Agreement, until such time as such Default is cured; or (ii) Cure Default. Cure such Default and recover the reasonable costs thereof from the party in Default, provided the party not in Default is current in all payments due hereunder.

5.3 **Attorneys' Fees:** In the event of any controversy arising under or relating to the interpretation or implementation of this Agreement or any breach thereof, the prevailing party shall be entitled to payment for all reasonable costs and attorney's fees (both trial and appellate) incurred in connection therewith.

I understand and accept the terms and conditions of this contract.

SIGNED AT Coral Gables, this 14th day of April, 2014

CLIENT'S SIGNATURE CLIENT'S SIGNATURE Florida Healthcare

John H. Ruiz
Print Client Name

Attorney
LA LEY RECOVERY SYSTEMS
4182 SW 74th Court
Miami, Florida 33155
(305) 649-0020

Plus

EDUARD MASAK
Print Client Name

CFJ
Print Name

EXHIBIT B

ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS, that the undersigned

LA LEY RECOVERY SYSTEMS, INC. ("La Ley Recovery Systems"), for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does by these presents, assign, sell, transfer, convey, and set over to MSP RECOVERY, LLC., ("Assignee"), its successors and assigns, all rights, title and interest in and to the agreement (the "Agreement") entered by and between La Ley Recovery Systems and Florida Healthcare Plus, Inc., on April 14th, 2014, as it relates to the recovery of claims of member, M.M., and related documents evidencing a security interest, liens or other security interests or encumbrances executed, filed and/or created in conjunction with collateral securing the Agreement. This Assignment is made without recourse or warranty except as referred to herein. The assignor has assigned this claim(s), pursuant to the underlying agreement but also assigns all causes of action to Assignee as it relates to M.M. This assignment shall encompass all of the rights from La Ley Recovery Systems and/or FHCP assigned to La Ley Recovery Systems by that Agreement dated on April 14th, 2014.

Dated this: 5th day of August, 2014

LA LEY RECOVERY SYSTEMS, INC.

By: _____

Mayra C. Ruiz, Authorized Representative

A

EXHIBIT C

ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS, that the undersigned MSP RECOVERY, LLC. ("Assignor"), for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does by these presents, assigns, sells, transfers, conveys, and sets over to MSPA CLAIMS 1, LLC, ("Assignee"), its successors and assignees, all rights, title and interest in and to the agreement and/or assignment Assignor entered into with La Ley Recovery Systems, Inc. ("La Ley Recovery") to recover any and all claims related documents evidencing a security interest, liens or other security interests or encumbrances executed, filed and/or created in conjunction with collateral securing the Agreement (the "Agreement") La Ley Recovery received from Florida Healthcare Plus ("FHCP") on April 14th, 2014 whereby FHCP is deemed to be a secondary payer pursuant to 42 U.S.C. § 1395y(b)(3)(A), specifically the claim of M.M. This Assignment is made without recourse or warranty except as referred to herein. The assignor has assigned this claim(s), pursuant to the underlying agreement but also assigns all causes of action to Assignee. As such, Assignee is the proper holder of the recovery rights of any and all claims, including the claim of M.M., whereby FHCP is deemed to be a secondary payer pursuant to 42 U.S.C. § 1395y(b)(3)(A).

Dated this **17th day of November, 2015**

MSP RECOVERY, LLC.

By: _____

John H. Ruiz, Manager

EXHIBIT D

[redacted]

EXECUTION COPY

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (the "Settlement Agreement") is made and entered into this 1st day of **June, 2016** by and between La Ley Recovery Systems Inc. ("LLRS"), La Ley Recovery Systems – FHCP, Inc. ("LLFHCP"), MSP Recovery LLC ("MSP"), MSP Recovery Services, LLC ("MSP Recovery"), and MSPA Claims 1, LLC ("MSPA") (LLRS, LLFHCP, MSP Recovery, MSP, and MSPA are collectively referred to herein as "La Ley"), on the one hand, and the Florida Department of Financial Services as Receiver of Florida Healthcare Plus, Inc. (the "Receiver"), on the other hand. La Ley and Receiver are each hereinafter referred to as "Party" and collectively as the "Parties."

RECITALS

WHEREAS, on April 15, 2014, La Ley entered into a Cost Recovery Agreement with Florida Healthcare Plus, Inc. ("FHCP") under which FHCP assigned all rights, title and interest held by FHCP to certain recoveries related to accidents or incidents recoverable pursuant to the Medicare Secondary Payer Act, the Medicaid Third Party Liability Act, and/or applicable Federal and State subrogation laws (the "Initial Agreement");

WHEREAS, On October 20, 2014, the Florida Department of Financial Services filed an Application for an Order Requiring FHCP to Show Cause Why It Should Not Be Placed in Receivership *In Re: The Receivership of Florida Healthcare Plus, Inc.* No. 2014-CA 2762 (Fla. Cir. Ct., Leon Cnty.) (the "Receivership Proceeding"); and

WHEREAS, on December 10, 2014, the Honorable George S. Reynolds, III entered an Order Appointing the Florida Department of Financial Services as Receiver of FHCP for Purposes of Immediate Rehabilitation and Automatic Liquidation Effective January 1, 2015, Injunction, and, Notice of Automatic Stay; and

WHEREAS, pursuant to the Liquidation Order and sections 631.111 and 631.141, Florida Statutes, the Department as Receiver is vested with title to all property, contracts, rights of action, and books and records of FHCP; and

WHEREAS, a dispute arose between the Receiver and La Ley regarding the respective rights of the Parties under the Initial Agreement; and

WHEREAS, the Parties desire to settle and resolve the dispute regarding the respective rights of the Parties under the Initial Agreement, modify the compensation provisions contemplated under the Initial Agreement, and provide for other terms and conditions as described in the term sheet entered into among the Parties (the "Term Sheet"); and

WHEREAS, La Ley, in conjunction with execution of the Term Sheet and in anticipation of execution of a separate and binding settlement agreement, deposited with Foley and Lardner, LLP ("Escrow Agent") [redacted]

Deputy Receiver

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises of the Parties set forth herein, and for other good and valuable consideration, the Parties hereby agree as follows:

1. **Effective Date.** This Settlement Agreement shall become effective on the date on which all of the conditions precedent, set forth in Section 6 of this Settlement Agreement, have occurred (the "Effective Date").

2. **Assignment of Claims and Recoveries**. Receiver acknowledges and agrees that the terms and conditions of the Initial Agreement, to the extent such terms and conditions do not conflict with the terms and conditions of this Settlement Agreement, shall remain in full force and effect from April 15, 2014 until the Effective Date of this Settlement Agreement.

a. Receiver hereby agrees that Receiver shall not object to, or seek to terminate for any reason, the Initial Agreement, and expressly acknowledges and agrees that as of the execution of the Initial Agreement, all rights, title, and interest held by FHCP to recoveries, including any rights, title and interest assigned to FHCP pursuant to contractual agreements with FHCP members, related to accidents or incidents recoverable pursuant to the Medicare Secondary Payer Act, the Medicaid Third Party Liability Act, and/or any other applicable Federal or State subrogation laws, and all rights, title and interest to recover payments made by FHCP on behalf of FHCP members pursuant to various legal theories related to accidents or incidents recoverable pursuant to the Medicare Secondary Payer Act, the Medicaid Third Party Liability Act, and/or any other applicable Federal or State subrogation laws ("Assigned Claims") were and continue to be irrevocably assigned to La Ley.

b. Notwithstanding any other legal rights to recover amounts pursuant to this Settlement Agreement and/or the Initial Agreement, the Parties agree that neither Party shall pursue recovery of any amount exceeding the amount actually paid by FHCP when such recovery would directly affect a Medicare and/or Medicaid beneficiary by reducing the recovery such beneficiary would obtain from a third party; provided, however, that in cases where a Medicare and/or Medicaid beneficiary's recoveries are not affected, La Ley shall continue to seek recovery of the amount billed or fee for service amounts, as permitted by applicable law. La Ley shall determine, in its own discretion, and utilizing good faith, whether the beneficiary's recoveries are affected in a particular instance. This restriction shall not apply, for example, to cases wherein a Medicare and/or Medicaid beneficiary has not made a claim as of the date that La Ley and/or its assignee commences its claims.

c. Notwithstanding any other legal rights to recover amounts pursuant to this Settlement Agreement, the Initial Agreement, and/or a provision in any applicable medical provider agreement, and regardless of whether the payment amount received from a third party by a medical provider with whom FHCP had a provider agreement ("contracted provider") is greater than the amount FHCP would have been obligated to pay the contracted provider under the provider agreement, the Parties agree that, La Ley shall not seek to recover any amounts paid to the contracted provider unless the contracted provider

Deputy Receiver

received payment from a third party and received payment from FHCP for the same services rendered to a member.

d. Expressly excepted from La Ley's rights to recover under this Settlement Agreement are the following:

i. The right of FHCP or the Receiver to recoup overpayments made to a provider for a submitted claim or to recoup payment(s) from a provider for a submitted claim if it is discovered that FHCP erroneously (i) paid more than the maximum allowed for the type of services rendered or (2) paid the same claim multiple times. Notwithstanding the foregoing, La Ley's recovery rights are not affected by this provision to the extent that the basis of the recovery of these payments stems from the fact that the provider was paid by both FHCP and another payer.

ii. Risk Sharing receivables due and owing to FHCP or the Receiver pursuant to applicable provisions of contracts between FHCP and its providers.

e. Receiver shall provide or cause to be provided to La Ley and shall only be required to provide or cause to be provided to Lay Ley the following claims information with the understanding and acknowledgement of the Parties that the Receiver makes no warranties or representations as to the completeness or accuracy of the information, data, or records created, held, or produced by FHCP or its providers, whether contracted or otherwise, from which the following information will be amalgamated and produced:

i. An extract of FHCP claims data for claims with dates of service between January 1, 2012, through December 31, 2014. The data will include information for claims filed prior to liquidation that were contained in the TriZetto QNXT system and information for claims filed with the Receiver's third party administrator ("TPA") after liquidation. The data will be provided in a Structured Query Language ("SQL") database.

(1) The Receiver's TPA estimates that it will require a minimum of 20 hours of work at a rate of Fifty Dollars ($50) per hour to gather and produce the data.

(2) The Parties acknowledge that the Receiver's TPA will require a minimum of fourteen days to produce the data extract from the date a request for the data contemplated hereunder is made by the Receiver.

(3) La Ley agrees to pay all costs associated with the TPA's production of the data extract and the Parties acknowledge and agree that the Receiver will not authorize the release of the data extract until La Ley has paid the costs for the production of the data extract in full.

(4) The Parties agree to work with each other and with the TPA in good faith to effectuate the claims data extract contemplated hereunder.

Deputy Receiver

ii. A list of FHCP's contracted providers and a specimen of the provisions of provider agreements relating to the recovery of payments by or from third parties (collectively the "Contracted Provider Documents") on the condition that La Ley agrees that it shall not use information gleaned from the Contracted Provider Documents for any purpose other than to determine the respective rights and responsibilities of FHCP and its contracted providers relative to Coordination of Benefits and provider compensation.

f. Receiver shall forward all inquiries regarding subrogation and recovery of Assigned Claims to La Ley within fifteen (15) days of receiving such inquiries. La Ley acknowledges that the Receiver need not maintain any FHCP documents or records beyond the time specified in the retention schedule of the Division of Rehabilitation and Liquidation.

3. **Settlement Payment.**

a. In exchange for the consideration reflected in this Settlement Agreement, and in lieu of the compensation payable to FHCP under the Initial Agreement, La Ley shall pay Receiver [redacted] (the "Settlement Payment").

b. The Settlement Payment shall be made in two payments, in accordance with the following: (i) on the Effective Date, La Ley shall cause the Escrow Agent to pay Receiver, in accordance with Section 3(d) of this Settlement Agreement, [redacted] (the "Initial Settlement Payment."); and (ii) on the one (1) year anniversary of the Effective Date, La Ley shall pay Receiver [redacted] (the "Final Settlement Payment").

c. As security for the Final Payment, contemporaneously with the execution of this Settlement Agreement, La Ley shall execute a promissory note, attached hereto as **Exhibit A**, in favor of Receiver in the principal amount of [redacted] (the "Promissory Note").

d. The Initial Settlement Payment shall be made by wire transfer from Escrow Agent to Receiver pursuant to wire instructions provided separately by Receiver. The Final Settlement Payment shall be made by check payable to Receiver or by wire transfer to Receiver pursuant to wire instructions provided by Receiver.

4. **Third Party Communications.** The Parties hereby mutually agree that the language contained in **Exhibit B** attached hereto shall be used in any and all Third Party Communications. For purposes of this Section 4, "Third Party Communications" shall mean any communication between La Ley and a third party that references FHCP or former FHCP members, including, but not limited to, demand letters, document requests, court filings, and agreements with subcontractors, affiliates, and assignees. La Ley will not use, in Third Party Communications, language inconsistent with that contained in Exhibit B. If La Ley desires to amend the language contained in its Third Party Communications, it will provide proposed amended language to the Receiver for approval. The Receiver shall, within (15) fifteen days of receipt of such proposed

Deputy Receiver

amended language, approve such language or detail to La Ley in writing its objections to the proposed amended language.

5. **Health Insurance Portability and Accountability Act of 1996 ("HIPAA").** La Ley's obligations under the Business Associate Agreement entered by and between La Ley and FHCP on April 15, 2014, remain in full force and effect. In addition to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), La Ley and Receiver shall execute the *Business Associate Agreement* which is attached hereto as **Exhibit C** and is incorporated herein by reference. La Ley shall agree to advise each employee of La Ley's HIPAA obligations and require each such employee to maintain those obligations by execution of a HIPAA compliant confidentiality statement.

6. **Conditions Precedent.** This Settlement Agreement is subject to and conditioned upon the full satisfaction of the following conditions precedent

a. The court in the Receivership Proceeding entering an order approving this Settlement Agreement; and

b. The execution and delivery to Receiver of the Promissory Note in accordance with Section 3(c) of this Settlement Agreement.

7. **Mutual Releases**.

a. In exchange for the consideration set forth in this Settlement Agreement, the receipt and sufficiency of which is acknowledged, Receiver for itself and its agents, agencies, beneficiaries, servicers, sub-servicers, attorneys, predecessors, successors and assigns, agrees to fully and forever, release, discharge, and covenant not to sue La Ley, its affiliates and assignees, from and for any and all claims whatsoever, in law or in equity, the Receiver and/or FHCP now has, may have had, or may hereafter have against La Ley, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, arising out of, or by reason of any matter, cause, action, event, or omission or thing prior to the date of this Settlement Agreement that pertains in any way to the Assigned Claims, the Initial Agreement, or any claim or voidable transfer applicable to La Ley arising from chapter 631, Florida Statutes.

b. In exchange for the consideration set forth in this Settlement Agreement, the receipt and sufficiency of which is acknowledged, La Ley, for itself and its agents, agencies, beneficiaries, servicers, sub-servicers, attorneys, predecessors, successors and assigns, agrees to fully and forever, release, discharge, and covenants not to sue Receiver, from and for any and all claims whatsoever, in law or in equity, La Ley now has, may have had, or may hereafter have against the Receiver, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, arising out of, or by reason of any matter, cause, action, event, or omission or thing prior to the date of this Settlement Agreement that pertains in any way to the Assigned Claims or the Initial Agreement.

8. **Dismissal**. Within (3) three business days after the receipt of the Initial Settlement Payment, the Receiver shall withdraw its September 18, 2015 Petition to Enjoin La Ley Recovery

Deputy Receiver

Systems Inc., Its Affiliates, Assignees, Representatives, Agents, Subcontractors, and All Other Entities From Further Collection Activities on Behalf Of Florida Healthcare Plus, Inc.

9. **Express Waiver of Rights By the Parties.** Notwithstanding any statute or provision of the common law that provides that a release does not extend to claims that a releasor does not know or suspect to exist at the time of executing the release, the releases as set forth in Section 7 of this Settlement Agreement shall be deemed to constitute full releases in accordance with their terms. The Parties shall be deemed knowingly and voluntarily to have waived, to the fullest extent permitted by law, the provisions, rights, and benefits of any federal law or the law of any state or territory or common law that would in any way limit the application of the releases to known or suspected claims. The Parties acknowledge and agree that this waiver is an essential and material term of this Settlement Agreement and without such waiver the Settlement Agreement would not have been entered into.

10. **Execution and Court Approval.** Upon execution of this Settlement Agreement, the Receiver shall file a motion seeking authority to enter into this Settlement Agreement and to provide the Releases required herein.

11. **Representations and Warranties.**

a. The Parties represent and warrant that they have not assigned to any other person or entity any claims released pursuant to this Settlement Agreement; except to the extent allowed in Section 20 hereof. If, contrary to this representation and warranty, a Party assigns or has assigned such rights to any other person or entity, that Party shall defend, indemnify, and hold harmless the other Party with respect to any claim or action brought by any assignee of any interest assigned contrary to this representation and warranty.

b. Each Party to this Settlement Agreement acknowledges that this Settlement Agreement is made and executed by such Party's own free will and in accordance with such Party's own judgment and upon advice of counsel. No Party has been influenced, coerced, or induced to make this compromise and settlement by improper actions by any other Party.

c. Each of the Parties represents and warrants that it is authorized to enter into this Settlement Agreement and that the execution and delivery of this Settlement Agreement and the consummation of this transaction will not conflict with or result in any violation or default under any provision of its articles of incorporation, charter, by-laws or partnership agreement or of any decree, statute, law, ordinance, rule or regulation applicable to it.

d. Each signatory of this Settlement Agreement declares, warrants, and represents that he or she has the general and specific authority to enter into and to execute this Settlement Agreement.

e. Each Party understands, acknowledges and agrees that if any fact now believed to be true is found hereafter to be other than, or different from, that which is now believed, each expressly assumes the risk of such difference in fact and agrees that this

Deputy Receiver

Settlement Agreement shall and will remain effective notwithstanding any such difference in fact.

12. **Indemnification.**

a. La Ley covenants and agrees to indemnify and hold harmless the Department of Financial Services, Receiver, and its employees and agents from and against any and all liability, loss, damage, cost, expense (including all reasonable fees of legal counsel and related disbursements), causes of action, suits, claims, demands or judgements of any nature whatsoever (i) arising from occurrences on or after the Effective Date of this Settlement Agreement involving the Assigned Claims, including without limitation, litigation initiated by La Ley related to any of the Assigned Claims, (ii) La Ley's breach of its obligations, covenants, warranties or representations under this Settlement Agreement, or (iii) La Ley's performance under this Settlement Agreement, excluding claims arising out of Receiver's gross negligence or willful misconduct.

b. Nothing stated in the Settlement Agreement is, or shall be deemed to be a waiver of the immunity afforded to the Department of Financial Services, Receiver, its employees, and agents pursuant to section 631.392, Florida Statutes, for any action taken in the performance of Receiver's powers and duties under chapter 631. Nothing herein shall be deemed to indemnify La Ley from any liability or claim arising out of the negligent performance or failure of performance of La Ley or any unrelated third party.

13. **Expenses.** Each Party shall pay its own legal, accounting, and other fees and expenses incident to the negotiation and execution of this Settlement Agreement and all subsequent agreements.

14. **Confidentiality.** The Parties agree and warrant that the compensation provisions of this Settlement Agreement and portions of records that evidence the negotiations leading to the amount of the Settlement Payment contemplated under this Settlement Agreement, including the audit of La Ley conducted by Receiver to assist the Parties in determining the amount of the Settlement Payment (the "Audit"), are to remain confidential to the extent permitted by law.

a. Receiver acknowledges that La Ley and its assignees have developed an IT system and legal methodologies, which system and methodologies were reviewed during the course of the Audit. Receiver further acknowledges that La Ley considers information provided to or obtained by the Receiver in connection with the Audit, the compensation provisions of this Settlement Agreement, and any portions of records that evidence the negotiations leadings to the amount of the Settlement Payment to be confidential and proprietary trade secret information.

b. La Ley acknowledges that pursuant to the provisions of Chapter 119, Florida Statutes, the Receiver has a duty to provide reasonable public access to all documents or other material made or received in connection with the transaction of official business, unless such document is made exempt or confidential by law.

c. The Parties acknowledge that "data, programs, or supporting documentation that is a trade secret as defined in s. 812.081, that is held by an agency as defined in chapter

Deputy Receiver

119, and that resides or exists internal or external to a computer, computer system, computer network, or electronic device is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution." § 815.04, Fla. Stat.

d. Upon the Receiver's receipt of a public records request which includes within its scope the compensation provisions of this Settlement Agreements or portions of records that evidence the negotiations leading to the amount of the Settlement Payment contemplated under this Settlement Agreement, including documents produced or created during the audit of the La Ley conducted by the Receiver to assist the Parties in determining the amount of the Settlement Payment, the Receiver shall provide

i. La Ley with notice of such a request and an opportunity to protect such records or portions of records from disclosure. The notice shall inform La Ley that it has thirty (30) days following receipt of such notice to file an action in circuit court seeking a determination whether the record or portions of the record in question contains trade secrets and an order barring public disclosure of the record. If La Ley files an action within thirty (30) days after receipt of notice of the public records request, the Receiver may not release the records or the records without redacting the purportedly confidential portions thereof pending the outcome of the legal action. The failure to file an action within thirty (30) days constitutes a waiver of any claim of confidentiality, and the Receiver shall release the records as requested.

ii. The requestor with (1) the records requested to the extent they are public records not made confidential and exempt by law and/or (2) the records requested to the extent they are public records with the confidential and exempt information redacted.

15. **Entire Agreement**. This Settlement Agreement sets forth the entire understanding of the Parties with regard to its subject matter, and supersedes and merges all prior discussions, agreements, promises, representations, warranties and arrangements between them with regard to such subject matter, and neither Party shall be bound by any agreement, representation or warranty regarding such subject matter other than as expressly set forth in this Settlement Agreement, in the Promissory Note, or in a subsequent writing signed by the Party to be bound thereby. This Settlement Agreement may not be modified or supplemented except by a writing signed by the Party to be bound thereby that specifies the effective date such amendment or waiver takes effect.

16. **Binding Effect.** Immediately upon full execution of this Settlement Agreement by and on behalf of all Parties, its terms, covenants, conditions, and provisions, obligations, undertakings, rights and benefits, shall be binding upon and shall inure to the benefit of the undersigned parties and their respective heirs, executors, liquidators, administrators, representatives, subrogees, successors and assigns.

17. **Amendment; waiver.** This Settlement Agreement may be amended or modified only by a writing executed by each of the Parties. No failure or delay in exercising any right, power, or privilege under this Settlement Agreement shall operate as a waiver thereof, nor shall

Deputy Receiver

any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power, or privilege under this Settlement Agreement.

18. **Governing Law.** This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to agreements made and to be performed entirely within such State. The Parties agree that any action or proceeding, however characterized, arising out of or relating to this Settlement Agreement shall be brought only in the Circuit Court of the Second Judicial Circuit in and for Leon County Florida, and the Parties irrevocably submit to the exclusive jurisdiction of such court for the purposes of any such action or proceeding and irrevocably agree to be bound by any judgment rendered by such court with respect to any such action or proceeding. The Parties waive any objection they may now or hereafter have to the venue of any such action or proceeding in such court and any claim that such action or proceeding has been brought in an inconvenient forum. Any order or judgment of the foregoing court may be enforced in any court having jurisdiction of the Parties and/or the subject matter. The Parties agree that in any action or proceeding arising out of or relating to this Settlement Agreement, or the enforcement of any provisions thereof, the Court is empowered to grant any legal or equitable relief that may be available, including without limitation, specific performance, injunctive relief and any mandatory injunction it deems appropriate.

19. **Conflict with Law.** If any provision of this Settlement Agreement should be declared invalid by a court of general jurisdiction and superseded by specific law or regulation, the remainder of the part or provision and the Settlement Agreement will remain in full force and effect provided the essential terms and conditions of this Settlement Agreement for each Party remain valid, binding and enforceable.

20. **Assignment.** The Parties agree that prior to payment of the Final Settlement Payment described herein, the Parties shall not assign this Settlement Agreement, directly or indirectly, in whole or in part, without prior written approval of the other Party; provided, however, that the Assigned Claims may be assigned by and among any of the companies collectively referred to herein as "La Ley," and the Receiver acknowledges that any assignment of the rights described hereunder by or among those companies collectively referred to as "La Ley" occurring prior to the execution of this Settlement Agreement shall be valid and enforceable.

21. **Notices.** Wherever notice is required under this Settlement Agreement, it shall be in writing, sent by certified mail or overnight delivery, and addressed:

If to Receiver

State of Florida, Department of Financial Services
Division of Rehabiliation and Liquidation
As Receiver of Florida Healthcare Plus, Inc.
Attn: Deputy Receiver of FHCP
2020 Capital Circle SE
Suite 310
Tallahassee, FL 32301

Deputy Receiver

If to La Ley

La Ley Recovery Systems Inc.

Attn: _____

_____

_____

22. **Negotiated Agreement.** The Parties and their counsel each have contributed to this Settlement Agreement and the fact that the initial and final draft shall have been prepared by any one Party shall not be used in any form in the construction or interpretation of this Settlement Agreement or any of its provisions.

23. **Headings.** Headings or titles to the several sections herein are for identification purposes only and shall not be construed as forming a part thereof and shall not affect the meaning or interpretation of the Settlement Agreement.

24. **Counterparts.** This Settlement Agreement may be executed in any number of counterparts, each of which is deemed an original, but all of which together constitute one and the same instrument. The exchange of signature pages by facsimile or e-mail to all Parties constitutes execution and delivery of this Settlement Agreement.

[signature page follows]

Deputy Receiver

IN WITNESS WHEREOF, Receiver and La Ley, intending to be legally bound and being duly authorized, have executed this Settlement Agreement as of the date first set forth above.

La Ley Recovery Systems, Inc.

By: DocuSigned by: Mayra Ruiz 4D32BC5068C0401...
Name: Mayra Ruiz
Title: Managing Member

Florida Department of Financial Services as Receiver of Florida Healthcare Plus, Inc.

By: Mary Linzee Branham
Name: Mary Linzee Branham
Title: Assistant Division Director

La Ley Recovery Systems - FHCP, Inc.

By: DocuSigned by: Mayra Ruiz 4D32BC5068C0401...
Name: Mayra Ruiz
Title: Managing Member

MSPA Claims 1, LLC

By: DocuSigned by: Walter Lista A49C881CD387428...
Name: Walter Lista
Title: Executive Vice President

MSP Recovery LLC

By: DocuSigned by: Walter Lista A49C881CD387428...
Name: Walter Lista
Title: Executive Vice President

MSP Recovery Services, LLC

By: DocuSigned by: Walter Lista A49C881CD387428...
Name: Walter Lista
Title: Executive Vice President

Deputy Receiver

Exhibit A

PROMISSORY NOTE

[redacted]

June 1, 2016
Tallahassee, Florida

1. Principal. For value received, and subject to the terms and conditions set forth herein, **La Ley Recovery Systems Inc.**, a Florida corporation, **La Ley Recovery Systems – FHCP, Inc.**, a Florida corporation, **MSP Recovery LLC**, a Florida Limited Liability Company, **MSP Recovery Services, LLC**, a Florida Limited Liability Company, and **MSPA Claims 1, LLC**, a Florida Limited Liability Company, jointly and severally ("Makers"), hereby agree and promise to pay to the order of **Florida Department of Financial Services as Receiver of Florida Healthcare Plus, Inc.** or its assigns ("Holder", and together with the Makers, "Parties"), the sum of [redacted] (the "Principal") at 2020 Capital Circle SE, Suite 310, Tallahassee Florida 32301 or such other address as Holder may specify by written notice to the Makers, in the manner more specifically set forth below. All sums owing under this note are payable in lawful money of the United States of America.

2. Payment of Principal and Interest. The entire Principal balance shall be due and payable in one installment, which shall be made on or before June 1, 2017. Makers shall pay all amounts due and owning under this Promissory Note in full when due without setoff, deduction, or withholding for any reason whatsoever.

3. Late Charge. In the event Makers fail to timely make payment of Principal due under this Promissory Note, Holder shall assess and Makers shall pay a late charge equal to the lesser of Four and Three-Quarters Percent (4.75%) of the full amount due or the maximum amount permitted by applicable law. Payment will be considered untimely and past due, if the entire Principal balance is not paid within five (5) calendar days from and including the date on which it became due, whether by acceleration or otherwise. The assessment of a late charge shall not affect or diminish Holder's rights and remedies in the event of default as set forth in Section 5.

4. Event of Default. Time is of the essence of this Promissory Note. Each of the following shall constitute an Event of Default under this Promissory Note:

(a) Failure of Makers to pay the entire Principal balance owed on this Promissory Note when same shall become due and payable, but only after same remains more than five (5) days past due; or

(b) Failure of Makers to perform or comply with any other representation, warranty or covenant contained in this Promissory Note; or

(c) Any assignment by Makers for the benefit of creditors, or filing by or against Makers of a petition in bankruptcy, or adjudication of Makers as bankrupt or insolvent, or any action taken by Makers' directors or stockholders seeking to dissolve, liquidate or cease doing business as a going concern.

5. Rights and Remedies Upon the Occurrence of an Event of Default.

(a) Upon the occurrence of an Event of Default specified in Section 4(a), Holder may, by written notice to Makers, declare this Promissory Note to be due and payable, whereupon the full Principal balance of this Promissory Note, and all other sums payable hereunder, shall become immediately due and payable without presentment, demand, protest, or other notice of any kind, all of which are hereby expressly waived, anything contained herein evidence the contrary notwithstanding.

(b) Upon the occurrence of an Event of Default specified in Section 4(b) or 4(c), the unpaid Principal balance of, and all other sums payable with regard to, this Promissory Note shall automatically and immediately become due and payable, in all cases without any action on the part of Holder.

6. Default Interest. Upon the occurrence of an Event of Default, Holder shall be entitled to receive and Makers agree and shall be required to pay interest on the entire unpaid Principal balance at an annual rate equal to the lesser of Five Percent (5%) or the maximum amount permitted by applicable law, and shall accrue from the date of default until all obligations under this Promissory Note are paid in full.

7. Transferability. This Promissory Note is not transferable by Makers without the prior written consent of Holder.

8. Non-Recourse. Notwithstanding any other provision of this Promissory Note, in no event shall Makers' shareholders, officers, directors, or managers have any personal liability for any of the obligations hereunder. Holder acknowledges and agrees, upon any Event of Default to look solely to Makers and any collateral pledged by Makers in support of Makers' obligations.

9. Modification and Waiver. This Promissory Note may not be amended, modified, or supplemented except by written agreement signed by the party against which the enforcement of the amendment, modification, or supplement is sought. No waiver of any of the provisions of this Promissory Note shall be deemed, or shall constitute, a waiver of any other provision. No waiver shall be binding unless executed in writing by the party making the waiver.

10. Attorney Fees. In the event that Holder engages attorney(s) to collect sums due or to enforce or construe any provision of this Promissory Note, or as a consequence of any default whether or not any legal action is filed, Makers shall immediately pay on demand all reasonable attorneys' fees, costs, and expenses of Holder, together with interest from the date of demand until paid.

11. Waiver of Presentment, Etc. Makers and all others who may become liable for the payment of all or any part of the sums that become due and payable under this Promissory Note do hereby severally waive presentment and demand for payment, notice of nonpayment, notice of dishonor, protest, notice of protest, notice of intent to accelerate the maturity hereof and all other notice, except to the extent that specific notices are required by this Promissory Note.

12. Full Authority. Each of the Makers represents and warrants that it is authorized to enter into this Promissory Note and that the execution and delivery of this Promissory Note and the consummation of this transaction will not conflict with or result in any violation or default under any provision of its articles of incorporation, charter, by-laws or partnership agreement or of any decree, statute, law, ordinance, rule or regulation applicable to it.

13. Notices. Any notice of other communication required by this Promissory Note shall be written and shall be (a) delivered in person or by courier, or (b) mailed by first class certified mail, return receipt requested, as follows, or to such other address as a party may designate to the other in writing:

Makers:

La Ley Recovery Systems Inc.,
La Ley Recovery Systems - FHCP, Inc.
MSPA Claims 1, LLC
MSP Recovery LLC
MSP Recovery Services, LLC

_____

_____

Holder:

Florida Department of Financial Services
Division of Rehabilitation &Liquidation
as Receiver of FHCP

2020 Capital Circle, SE, Suite 310

Tallahassee, Florida 32301

If delivered personally or by courier, the date on which the notice or other document is delivered shall be the date on which the delivery is made, and if delivered by registered or certified mail, the date on which the notice or other document is received shall be the date of delivery.

11. Headings. All section headings contained in this Promissory Note are for convenience of reference only, do not form a part of this Promissory Note, and shall not affect in any way the meaning or interpretation of this Promissory Note.

12. Governing Law and Consent to Jurisdiction. This Promissory Note shall be governed by and construed under the laws of the State of Florida. The Parties agree that any action or proceeding, however characterized, arising out of or relating to this Promissory Note shall be brought only in the Circuit Court of the Second Judicial Circuit in and for Leon County Florida, and the Parties irrevocably submit to the exclusive jurisdiction of such court for the purposes of any such action or proceeding and irrevocably agree to be bound by any judgment rendered by such court with respect to any such action or proceeding. The Parties waive any objection they

may now or hereafter have to the venue of any such action or proceeding in such court and any claim that such action or proceeding has been brought in an inconvenient forum.

13. Severability. In the event any provision of this Promissory Note is deemed to be invalid, illegal, or unenforceable, all other provisions of this Promissory Note that are not affected by the invalidity, illegality, or unenforceability shall remain in full force and effect.

[Signature page follows]

MAKERS

La Ley Recovery Systems, Inc.

By: DocuSigned by: Mayra Ruiz
Name: Mayra Ruiz
Title: Managing Member
Date: 6/1/2016

La Ley Recovery Systems - FHCP, Inc.

By: DocuSigned by: Mayra Ruiz
Name: Mayra Ruiz
Title: Managing Member
Date: 6/1/2016

MSPA Claims 1, LLC

By: DocuSigned by: Walter Lista
Name: Walter Lista
Title: Executive Vice President
Date: 6/1/2016

MSP Recovery LLC

By: DocuSigned by: Walter Lista
Name: Walter Lista
Title: Executive Vice President
Date: 6/1/2016

MSP Recovery Services, LLC

By: DocuSigned by: Walter Lista
Name: Walter Lista
Title: Executive Vice President
Date: 6/1/2016

HOLDER

Florida Department of Financial Services as Receiver of Florida Healthcare Plus, Inc.

By: MaryLinzee Branham
Name: MaryLinzee Branham
Title: Assistant Division Director
Date: _____

Exhibit B

THIRD PARTY COMMUNICATIONS

Please be advised that on April 15, 2014, Florida Healthcare Plus, Inc. ("FHCP") assigned to La Ley Recovery System, Inc. and its affiliated entities, listed below including MSP, all rights, title, and interest held by to recoveries including any rights, title and interest assigned to FHCP pursuant to contractual agreements with FHCP members, related to accidents or incidents recoverable pursuant to the Medicare Secondary Payer Act, the Medicaid Third Party Liability Act, and/or any other applicable Federal or State subrogation laws, and all rights, title and interest to recover payments made by FHCP on behalf of FHCP members pursuant to various legal theories related to accidents or incidents recoverable pursuant to the Medicare Secondary Payer Act, the Medicaid Third Party Liability Act, and/or any other applicable Federal or State subrogation laws.

On December 10, 2014, the Second Judicial Circuit Court, in and for Leon County, Florida, entered an Order Appointing the Florida Department of Financial Services as Receiver of FHCP ("Receiver") for Purposes of Immediate Rehabilitation and Automatic Liquidation Effective January 1, 2015, Injunction, and, Notice of Automatic Stay. The Receiver has expressly acknowledged and confirmed the above-referenced assignment.

EXHIBIT C

BUSINESS ASSOICATE AGREEMENTS

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (the "Agreement") is entered into by and between the Florida Department of Financial Services, Division of Rehabilitation and Liquidation (the "RECEIVER"), as the RECEIVER of **Florida Healthcare Plus, Inc.**, pursuant to the court Order entered in Leon County, Florida Circuit Court Case No.: 2014-CA-2762, and **La Ley Recovery Systems, Inc.** ("Business Associate"), effective the 1st day of June, 2016. This Agreement shall be incorporated into and made part of the Underlying Agreement (defined below).

RECITALS

WHEREAS, the RECEIVER and Business Associate are parties to an agreement (the "Underlying Agreement") pursuant to which Business Associate provides certain services to the RECEIVER and, in connection with those services, the RECEIVER discloses to Business Associate certain protected health information ("PHI") that is subject to protection under the Health Insurance Portability and Accountability Act of 1996, as amended from time to time ("HIPAA"); and

WHEREAS, the Parties wish to set forth their understandings with regard to the use and disclosure of Protected Health Information ("PHI") by Business Associate in performance of its obligations in compliance with (1) the Privacy and Security Regulations; and (2) Subtitle D of the Health Information Technology for Economic and Clinical Health Act, Title XIII of Public Law 111-005 (42 U.S.C.A. Section 17921 et seq., subchapter III, Privacy).

NOW THEREFORE, for and in consideration of the recitals above and the mutual covenants and conditions herein contained, the RECEIVER and Business Associate enter into this Agreement to provide a full statement of their respective responsibilities.

SECTION I - DEFINITIONS

1.1 Definitions. Capitalized terms shall have the meanings given to them in the Privacy and Security Regulations and HITECH, which are incorporated herein by reference.

SECTION II – OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

2.1 Performance of Agreement. Business Associate, its agents and employees (collectively referred to as "Business Associate") agrees to not use or further disclose PHI other than as permitted or required by this Agreement, the Underlying Agreement, or as Required by Law.

2.2 Safeguards for Protection of PHI. Business Associate agrees to use reasonable safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement. Business Associate agrees to cooperate with the RECEIVER's efforts to mitigate, to the extent practicable, any harmful effects that arise from a use or disclosure of PHI by

Business Associate in violation of the requirements of this Agreement in accordance with 45 C.F.R. Section 164.514(d).

2.3 Electronic Health Information Security and Integrity. Business Associate shall develop, implement, maintain and use appropriate administrative, technical and physical security measures consistent with and in compliance with the Security Regulations and HITECH to preserve the integrity, confidentiality and availability of all electronic PHI that it creates, receives, maintains or transmits on behalf of the RECEIVER. Business Associate shall document and keep these security measures current in accordance with the Security Regulations and HITECH (including 42 U.S.C.A. Section 17931).

2.4 Protection of Exchanged Information in Electronic Transactions. If Business Associate conducts any Standard Transaction for or on behalf of the RECEIVER, Business Associate shall comply, and shall require any subcontractor or agent conducting such Standard Transaction to comply, where applicable.

2.5 Reporting. As described below, Business Associate shall report to the RECEIVER in writing (a) any use or disclosure of PHI not permitted under 45 C.F.R. Section 164, Subpart E, this Agreement, or by law, (b) any Security Incident (as defined below) of which it becomes aware and (c) any Breach of Unsecured PHI in accordance with HITECH, including 42 U.S.C.A. Section 17932; provided, however, that the Parties acknowledge and agree that this Section constitutes written notice by Business Associate to the RECEIVER of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below). "Unsuccessful Security Incidents" will include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI. For purposes of this Agreement, the term "Security Incident" means the successful unauthorized access, use, disclosure, modification or destruction of electronic PHI.

(a) Reporting Security Incidents or Improper Uses or Disclosures. Business Associate shall make the report to the RECEIVER within three (3) business days after Business Associate learns of such unauthorized use or disclosure or Security Incident. In accordance with 45 C.F.R. Section 164.404, any unauthorized use or disclosure of PHI that is a Breach of Unsecured PHI shall be reported as required under subsection (b) below.

(b) Notification of a Breach. Pursuant to 45 C.F.R. Section 164.410, Business Associate shall provide written notice to the RECEIVER of any Breach of Unsecured PHI within three business days after Business Associate discovers the Breach. Business Associate's report to the RECEIVER shall identify or describe: (i) the affected Individual whose Unsecured PHI has been or is reasonably believed to have been accessed, acquired or disclosed, if known; (ii) the incident, including the date of the Breach and the date of the discovery of the Breach, if known; (iii) the types of Unsecured PHI involved in the Breach; (iv) any specific steps the Individual should take to protect him or herself from potential harm related to the

Breach; (v) what the Business Associate is doing to investigate the Breach, to mitigate losses and to protect against further Breaches; (vi) contact procedures for how the Individual can obtain further information from the Business Associate; and (vii) such other information as required by 45 C.F.R. Section 164.404(c).

2.6 Use of Subcontractors. Business Associate shall require each of its subcontractors or agents to whom Business Associate may provide PHI on behalf of the RECEIVER to agree to written contractual provisions that impose at least the same obligations to protect such PHI as are imposed on Business Associate by this Agreement, the Privacy and Security Regulations and HITECH.

2.7 Access to PHI. To the extent Business Associate possesses PHI in a Designated Record Set, Business Associate shall provide access, at the written request of the RECEIVER, to PHI in a Designated Record Set, to the RECEIVER to meet the requirements under Title 45, Section 164.524 of the C.F.R. or applicable state law and to meet the electronic transmission requirements for access to Electronic Health Records by Individuals in accordance with HITECH, including 42 U.S.C.A. Section 17935(e).

2.8 Amendments to PHI. To the extent Business Associate possesses PHI in a Designated Record Set, Business Associate agrees to make any amendments to PHI in a Designated Record Set that the RECEIVER directs or agrees to pursuant to 45 C.F.R. Section 164.526 at the request of the RECEIVER in the time and manner mutually agreed upon by the Parties.

2.9 Allowing the RECEIVER to Monitor Compliance. Business Associate will make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, the RECEIVER available to the Secretary for purposes of the Secretary determining the RECEIVER's compliance with the Privacy Rule and the Security Rule. Upon reasonable notice and prior written request, Business Associate agrees to make available to the RECEIVER during normal business hours, at Business Associate's place of business, such practices, books and records for the purpose of assessing Business Associate's compliance with the Privacy Rule or Security Rule; provided however, that such request does not compromise other proprietary or confidential information of Business Associate or its other customers and is subject to attorney-client and other applicable legal privileges.

2.10 Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

2.11 Marketing. Business Associate shall not receive direct or indirect payment for marketing communications which include PHI without authorization from the RECEIVER or the affected Individuals unless such communication is permitted under the Privacy Regulations and HITECH, including 42 U.S.C.A. Section 17936.

2.12 Sale of PHI. Business Associate shall not receive direct or indirect payment in exchange for any PHI including Electronic Health Records, unless Business Associate receives authorization from the RECEIVER or by all affected Individuals, except as permitted under HITECH including 42 U.S.C.A. Section 17935(d).

SECTION III – PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

3.1 General. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, the RECEIVER as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by the RECEIVER.

3.2 Specific. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI for the proper management and administration of the Business Associate, provided that such disclosures are Required by Law, or are permitted by law provided that Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and that the person will notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached. Additionally, except as limited in this Agreement, Business Associate may use PHI to provide Data Aggregation Services to Receiver (to the extent detailed in the Underlying Agreement) as permitted by 45 C.F.R. Section 164.504(e)(2)(i)(B). Business Associate may also de-identify PHI in accordance with the standards set forth in 45 C.F.R. Section 164.514(b) and may use or disclose such de-identified data unless prohibited by applicable law.

3.3 Access to PHI. Business Associate shall refer to the RECEIVER all requests by Individuals for information about, or accounting of, disclosures of PHI in accordance with 45 C.F.R. Section 164.524 and Section 2.7.

3.4 Documentation of Disclosures. Business Associate agrees to document disclosures of PHI, other than for treatment, payment or healthcare operations or disclosures that are incidental to another permissible disclosure, and information related to such disclosures to the extent required for the RECEIVER to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. Section 164.528.

3.5 Accounting of Disclosures. Business Associate agrees to provide to the RECEIVER, in a reasonable time and manner, but not later than ten (10) business days of the RECEIVER's written request, information collected in accordance with Section 3.4 of this Agreement, to the extent required to permit the RECEIVER to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. Section 164.528. Business Associate shall document all disclosures of PHI and information related to such disclosures as would be required for the RECEIVER to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with Title 45,

Section 164.528 of the C.F.R., including PHI in Electronic Health Records in accordance with HITECH. Business Associate agrees to provide the RECEIVER, information collected in accordance with this paragraph, to permit the RECEIVER to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with Title 45, Section 164.528 of the C.F.R. and HITECH, including 42 U.S.C.A. Section 17935(c) with respect to Electronic Health Records. To the extent a request for an accounting relates to disclosures of PHI in Electronic Health Records by Business Associate, Business Associate shall provide the accounting directly to the RECEIVER upon request.

3.6 Violations of Law. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. Section 164.502(j)(1).

SECTION IV – OBLIGATIONS OF RECEIVER

4.1 Notice of Privacy Practices. The RECEIVER shall provide Business Associate with the notice of privacy practices that [company name], has produced in accordance with 45 C.F.R. Section 164.520, as well as any changes to such notice that may affect Business Associate's use or disclosure of PHI no later than fifteen (15) days prior to the effective date of the change or limitation.

4.2 Changes in Use of PHI. The RECEIVER shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures. Business Associate shall have a reasonable period of time to act on such notice but shall be provided written notice no later than fifteen (15) days prior to the effective date of the change or limitation.

4.3 Restrictions to Use of PHI. The RECEIVER shall notify Business Associate in writing no later than fifteen (15) days prior to the effective date of any restriction on the use or disclosure of PHI that Receiver has agreed to in accordance with 45 C.F.R. Section 164.522. Business Associate shall comply with the terms of such restriction.

4.4 RECEIVER Requests. The RECEIVER represents and warrants it shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the RECEIVER. In the event the RECEIVER requests Business Associate to use or disclose PHI in any manner, and such use or disclosure results in a violation or alleged violation of HIPAA or this Agreement, the RECEIVER will hold harmless Business Associate from all liabilities, costs and damages arising out of or in any way connected with such use or disclosure, including reasonable attorney's fees.

4.5 RECEIVER Disclosures. The RECEIVER represents and warrants to Business Associate that the RECEIVER will not disclose any PHI to Business Associate unless the RECEIVER has obtained any consents and authorizations that may be required by law or otherwise necessary for such disclosure.

SECTION V - TERM/TERMINATION

5.1 Term. The term of this Agreement shall be effective as of the day and year first above written, and shall continue for as long as PHI is being exchanged by the RECEIVER and Business Associate.

5.2 Termination for Cause. Either party may terminate this Agreement and the Underlying Agreement for a material breach of this Agreement by the other party if such breach is not cured within thirty (30) days of receipt of written notice thereof. If neither termination nor cure are feasible, the RECEIVER shall report the violation to the Secretary.

5.3 Termination After Repeated Violations. Either party may terminate the Underlying Agreement if either party repeatedly violates this Agreement or any provision hereof, irrespective of whether, or how promptly, either party may remedy such violation after being notified of the same.

5.4 Effect of Termination. Upon termination of this Agreement, Business Associate shall destroy or return to the RECEIVER all PHI provided by the RECEIVER to the Business Associate or created or received by the Business Associate on behalf of the RECEIVER. If it is infeasible for Business Associate to return or destroy PHI upon termination of this Agreement, Business Associate will maintain the protection required under this Agreement of the PHI for the period of time required under applicable law, or in accordance with Business Associate's internal record retention schedule as in effect from time to time, at which time Business Associate shall destroy the PHI in accordance with acceptable business procedures. This provision shall also apply to PHI in the possession of subcontractors or agents of the Business Associate, and Business Associate shall be fully responsible for such compliance.

5.5 Survival. The rights and obligations of Business Associate under Section 5.4 of this Agreement shall survive the termination of this Agreement.

SECTION VI - BREACH COST REIMBURSEMENT

6.1 Breach Cost Reimbursement. In the event of a Breach caused solely by Business Associate and the HIPAA Regulations require notice to individuals pursuant to 45 C.F.R. Sections 164.404 and 164.406, Business Associate agrees to reimburse the RECEIVER for the reasonable and substantiated costs related to the following: providing notifications to affected individuals, the media, or the Secretary, providing credit monitoring services to the affected individuals, if appropriate, for up to one (1) year, any fines and penalties assessed against the RECEIVER directly attributable to Business Associate's Breach, investigation costs, mitigation efforts required under the HIPAA Regulations, and attorney's fees incurred directly as a result of the Breach (but not in connection with any third-party claims).

SECTION VII - MISCELLANEOUS

7.1 Construction. This Agreement shall be construed as broadly as necessary to implement and comply with HIPAA and the HIPAA regulations. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA and HIPAA regulations. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended. Any ambiguity in this Agreement shall be resolved to permit the Parties to comply with the Privacy Rule.

7.2 Notice. All notices and other communications required or permitted pursuant to this Agreement shall be in writing, addressed to the party at the address set forth at the end of this Agreement, or to such other address as either party may designate in writing from time to time. All notices and other communications shall be mailed by registered or certified mail, return receipt requested, postage pre-paid, or transmitted by hand delivery or telegram. All notices shall be effective as of the date of delivery of personal notice or on the date of receipt, whichever is applicable.

7.3 Modification of this Agreement. The parties recognize that this Agreement may need to be modified from time to time to ensure consistency with amendments to and changes in applicable federal and state laws and regulations, including, but not limited to, HIPAA. The parties agree to execute any additional amendments to this Agreement reasonably necessary for each party to comply with HIPAA, including any requirements related to a Chain of Trust Agreement between the parties pursuant to the HIPAA security standards. This Agreement shall not be waived or altered, in whole or in part, except in writing signed by the parties.

7.4 Transferability. This Agreement may not be assigned by either party without the express written consent of the other.

7.5 Governing Law and Venue. This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of Florida, without giving effect to its conflict of laws provisions.

7.6 Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective permitted successors and assigns.

7.7 Execution. This Agreement may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute but one Agreement.

7.8 Gender and Number. The use of the masculine, feminine or neutral genders, and the use of the singular and plural, shall not be given an effect of any exclusion or limitation herein. The use of the word “person” or “party” shall mean and include any individual, trust, corporation, partnership or other entity.

7.9 Priority of Agreement. If any portion of this Agreement is inconsistent with the terms of the Underlying Agreement, the terms of this Agreement shall prevail. Except as set forth above, the remaining provisions of the Underlying Agreement are ratified in their entirety.

7.10 Entire Agreement. This Agreement constitutes the entire Agreement between the parties concerning the subject herein, and supersedes all prior oral or written agreements between the parties on same.

7.11 Beneficiaries. The parties agree that there shall be no incidental or intended third-party beneficiaries under this Agreement, nor shall any other person on entity have rights arising from the same.

IN WITNESS WHEREOF, the parties have hereunto set their hands effective the day and year first above written.

[signature page follows]

The RECEIVER
Signature: _____
Name: Mary Linzee Branham
Title: Assistant Division Dir
Date: June 1, 2016

Address: 2020 Capital Circle, SE
Alexander Building, 3rd Floor
Tallahassee, FL 32301

BUSINESS ASSOCIATE
Signature: Mayra Ruiz (DocuSigned by: Mayra Ruiz 4D32BC60D6C0401...)
Name: Mayra Ruiz
Title: Managing Member
Date: 6/1/2016

Address: 5000 SW 75 Ave Suite 400
Miami, Fl. 33155

The RECEIVER
Signature: _____
Name: Mary Linzee Branham
Title: Assistant Division Dir
Date: June 1, 2016

Address: 2020 Capital Circle, SE
Alexander Building, 3rd Floor
Tallahassee, FL 32301

BUSINESS ASSOCIATE
Signature: _____
Name: _____
Title: _____
Date: _____

Address: _____

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (the "Agreement") is entered into by and between the Florida Department of Financial Services, Division of Rehabilitation and Liquidation (the "RECEIVER"), as the RECEIVER of **Florida Healthcare Plus, Inc.**, pursuant to the court Order entered in Leon County, Florida Circuit Court Case No.: 2014-CA-2762, and **La Ley Recovery Systems --FHCP, Inc.** ("Business Associate"), effective the 1st day of June, 2016. This Agreement shall be incorporated into and made part of the Underlying Agreement (defined below).

RECITALS

WHEREAS, the RECEIVER and Business Associate are parties to an agreement (the "Underlying Agreement") pursuant to which Business Associate provides certain services to the RECEIVER and, in connection with those services, the RECEIVER discloses to Business Associate certain protected health information ("PHI") that is subject to protection under the Health Insurance Portability and Accountability Act of 1996, as amended from time to time ("HIPAA"); and

WHEREAS, the Parties wish to set forth their understandings with regard to the use and disclosure of Protected Health Information ("PHI") by Business Associate in performance of its obligations in compliance with (1) the Privacy and Security Regulations; and (2) Subtitle D of the Health Information Technology for Economic and Clinical Health Act, Title XIII of Public Law 111-005 (42 U.S.C.A. Section 17921 et seq., subchapter III, Privacy).

NOW THEREFORE, for and in consideration of the recitals above and the mutual covenants and conditions herein contained, the RECEIVER and Business Associate enter into this Agreement to provide a full statement of their respective responsibilities.

SECTION I - DEFINITIONS

1.1 Definitions. Capitalized terms shall have the meanings given to them in the Privacy and Security Regulations and HITECH, which are incorporated herein by reference.

SECTION II – OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

2.1 Performance of Agreement. Business Associate, its agents and employees (collectively referred to as "Business Associate") agrees to not use or further disclose PHI other than as permitted or required by this Agreement, the Underlying Agreement, or as Required by Law.

2.2 Safeguards for Protection of PHI. Business Associate agrees to use reasonable safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement. Business Associate agrees to cooperate with the RECEIVER's efforts to mitigate, to the extent practicable, any harmful effects that arise from a use or disclosure of PHI by

Business Associate in violation of the requirements of this Agreement in accordance with 45 C.F.R. Section 164.514(d).

2.3 Electronic Health Information Security and Integrity. Business Associate shall develop, implement, maintain and use appropriate administrative, technical and physical security measures consistent with and in compliance with the Security Regulations and HITECH to preserve the integrity, confidentiality and availability of all electronic PHI that it creates, receives, maintains or transmits on behalf of the RECEIVER. Business Associate shall document and keep these security measures current in accordance with the Security Regulations and HITECH (including 42 U.S.C.A. Section 17931).

2.4 Protection of Exchanged Information in Electronic Transactions. If Business Associate conducts any Standard Transaction for or on behalf of the RECEIVER, Business Associate shall comply, and shall require any subcontractor or agent conducting such Standard Transaction to comply, where applicable.

2.5 Reporting. As described below, Business Associate shall report to the RECEIVER in writing (a) any use or disclosure of PHI not permitted under 45 C.F.R. Section 164, Subpart E, this Agreement, or by law, (b) any Security Incident (as defined below) of which it becomes aware and (c) any Breach of Unsecured PHI in accordance with HITECH, including 42 U.S.C.A. Section 17932; provided, however, that the Parties acknowledge and agree that this Section constitutes written notice by Business Associate to the RECEIVER of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below). "Unsuccessful Security Incidents" will include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI. For purposes of this Agreement, the term "Security Incident" means the successful unauthorized access, use, disclosure, modification or destruction of electronic PHI.

(a) Reporting Security Incidents or Improper Uses or Disclosures. Business Associate shall make the report to the RECEIVER within three (3) business days after Business Associate learns of such unauthorized use or disclosure or Security Incident. In accordance with 45 C.F.R. Section 164.404, any unauthorized use or disclosure of PHI that is a Breach of Unsecured PHI shall be reported as required under subsection (b) below.

(b) Notification of a Breach. Pursuant to 45 C.F.R. Section 164.410, Business Associate shall provide written notice to the RECEIVER of any Breach of Unsecured PHI within three business days after Business Associate discovers the Breach. Business Associate's report to the RECEIVER shall identify or describe: (i) the affected Individual whose Unsecured PHI has been or is reasonably believed to have been accessed, acquired or disclosed, if known; (ii) the incident, including the date of the Breach and the date of the discovery of the Breach, if known; (iii) the types of Unsecured PHI involved in the Breach; (iv) any specific steps the Individual should take to protect him or herself from potential harm related to the

Breach; (v) what the Business Associate is doing to investigate the Breach, to mitigate losses and to protect against further Breaches; (vi) contact procedures for how the Individual can obtain further information from the Business Associate; and (vii) such other information as required by 45 C.F.R. Section 164.404(c).

2.6 Use of Subcontractors. Business Associate shall require each of its subcontractors or agents to whom Business Associate may provide PHI on behalf of the RECEIVER to agree to written contractual provisions that impose at least the same obligations to protect such PHI as are imposed on Business Associate by this Agreement, the Privacy and Security Regulations and HITECH.

2.7 Access to PHI. To the extent Business Associate possesses PHI in a Designated Record Set, Business Associate shall provide access, at the written request of the RECEIVER, to PHI in a Designated Record Set, to the RECEIVER to meet the requirements under Title 45, Section 164.524 of the C.F.R. or applicable state law and to meet the electronic transmission requirements for access to Electronic Health Records by Individuals in accordance with HITECH, including 42 U.S.C.A. Section 17935(e).

2.8 Amendments to PHI. To the extent Business Associate possesses PHI in a Designated Record Set, Business Associate agrees to make any amendments to PHI in a Designated Record Set that the RECEIVER directs or agrees to pursuant to 45 C.F.R. Section 164.526 at the request of the RECEIVER in the time and manner mutually agreed upon by the Parties.

2.9 Allowing the RECEIVER to Monitor Compliance. Business Associate will make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, the RECEIVER available to the Secretary for purposes of the Secretary determining the RECEIVER's compliance with the Privacy Rule and the Security Rule. Upon reasonable notice and prior written request, Business Associate agrees to make available to the RECEIVER during normal business hours, at Business Associate's place of business, such practices, books and records for the purpose of assessing Business Associate's compliance with the Privacy Rule or Security Rule; provided however, that such request does not compromise other proprietary or confidential information of Business Associate or its other customers and is subject to attorney-client and other applicable legal privileges.

2.10 Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

2.11 Marketing. Business Associate shall not receive direct or indirect payment for marketing communications which include PHI without authorization from the RECEIVER or the affected Individuals unless such communication is permitted under the Privacy Regulations and HITECH, including 42 U.S.C.A. Section 17936.

2.12 Sale of PHI. Business Associate shall not receive direct or indirect payment in exchange for any PHI including Electronic Health Records, unless Business Associate receives authorization from the RECEIVER or by all affected Individuals, except as permitted under HITECH including 42 U.S.C.A. Section 17935(d).

SECTION III – PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

3.1 General. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, the RECEIVER as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by the RECEIVER.

3.2 Specific. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI for the proper management and administration of the Business Associate, provided that such disclosures are Required by Law, or are permitted by law provided that Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and that the person will notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached. Additionally, except as limited in this Agreement, Business Associate may use PHI to provide Data Aggregation Services to Receiver (to the extent detailed in the Underlying Agreement) as permitted by 45 C.F.R. Section 164.504(e)(2)(i)(B). Business Associate may also de-identify PHI in accordance with the standards set forth in 45 C.F.R. Section 164.514(b) and may use or disclose such de-identified data unless prohibited by applicable law.

3.3 Access to PHI. Business Associate shall refer to the RECEIVER all requests by Individuals for information about, or accounting of, disclosures of PHI in accordance with 45 C.F.R. Section 164.524 and Section 2.7.

3.4 Documentation of Disclosures. Business Associate agrees to document disclosures of PHI, other than for treatment, payment or healthcare operations or disclosures that are incidental to another permissible disclosure, and information related to such disclosures to the extent required for the RECEIVER to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. Section 164.528.

3.5 Accounting of Disclosures. Business Associate agrees to provide to the RECEIVER, in a reasonable time and manner, but not later than ten (10) business days of the RECEIVER's written request, information collected in accordance with Section 3.4 of this Agreement, to the extent required to permit the RECEIVER to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. Section 164.528. Business Associate shall document all disclosures of PHI and information related to such disclosures as would be required for the RECEIVER to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with Title 45,

Section 164.528 of the C.F.R., including PHI in Electronic Health Records in accordance with HITECH. Business Associate agrees to provide the RECEIVER, information collected in accordance with this paragraph, to permit the RECEIVER to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with Title 45, Section 164.528 of the C.F.R. and HITECH, including 42 U.S.C.A. Section 17935(c) with respect to Electronic Health Records. To the extent a request for an accounting relates to disclosures of PHI in Electronic Health Records by Business Associate, Business Associate shall provide the accounting directly to the RECEIVER upon request.

3.6 Violations of Law. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. Section 164.502(j)(1).

SECTION IV – OBLIGATIONS OF RECEIVER

4.1 Notice of Privacy Practices. The RECEIVER shall provide Business Associate with the notice of privacy practices that [company name], has produced in accordance with 45 C.F.R. Section 164.520, as well as any changes to such notice that may affect Business Associate's use or disclosure of PHI no later than fifteen (15) days prior to the effective date of the change or limitation.

4.2 Changes in Use of PHI. The RECEIVER shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures. Business Associate shall have a reasonable period of time to act on such notice but shall be provided written notice no later than fifteen (15) days prior to the effective date of the change or limitation.

4.3 Restrictions to Use of PHI. The RECEIVER shall notify Business Associate in writing no later than fifteen (15) days prior to the effective date of any restriction on the use or disclosure of PHI that Receiver has agreed to in accordance with 45 C.F.R. Section 164.522. Business Associate shall comply with the terms of such restriction.

4.4 RECEIVER Requests. The RECEIVER represents and warrants it shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the RECEIVER. In the event the RECEIVER requests Business Associate to use or disclose PHI in any manner, and such use or disclosure results in a violation or alleged violation of HIPAA or this Agreement, the RECEIVER will hold harmless Business Associate from all liabilities, costs and damages arising out of or in any way connected with such use or disclosure, including reasonable attorney's fees.

4.5 RECEIVER Disclosures. The RECEIVER represents and warrants to Business Associate that the RECEIVER will not disclose any PHI to Business Associate unless the RECEIVER has obtained any consents and authorizations that may be required by law or otherwise necessary for such disclosure.

SECTION V - TERM/TERMINATION

5.1 Term. The term of this Agreement shall be effective as of the day and year first above written, and shall continue for as long as PHI is being exchanged by the RECEIVER and Business Associate.

5.2 Termination for Cause. Either party may terminate this Agreement and the Underlying Agreement for a material breach of this Agreement by the other party if such breach is not cured within thirty (30) days of receipt of written notice thereof. If neither termination nor cure are feasible, the RECEIVER shall report the violation to the Secretary.

5.3 Termination After Repeated Violations. Either party may terminate the Underlying Agreement if either party repeatedly violates this Agreement or any provision hereof, irrespective of whether, or how promptly, either party may remedy such violation after being notified of the same.

5.4 Effect of Termination. Upon termination of this Agreement, Business Associate shall destroy or return to the RECEIVER all PHI provided by the RECEIVER to the Business Associate or created or received by the Business Associate on behalf of the RECEIVER. If it is infeasible for Business Associate to return or destroy PHI upon termination of this Agreement, Business Associate will maintain the protection required under this Agreement of the PHI for the period of time required under applicable law, or in accordance with Business Associate's internal record retention schedule as in effect from time to time, at which time Business Associate shall destroy the PHI in accordance with acceptable business procedures. This provision shall also apply to PHI in the possession of subcontractors or agents of the Business Associate, and Business Associate shall be fully responsible for such compliance.

5.5 Survival. The rights and obligations of Business Associate under Section 5.4 of this Agreement shall survive the termination of this Agreement.

SECTION VI - BREACH COST REIMBURSEMENT

6.1 Breach Cost Reimbursement. In the event of a Breach caused solely by Business Associate and the HIPAA Regulations require notice to individuals pursuant to 45 C.F.R. Sections 164.404 and 164.406, Business Associate agrees to reimburse the RECEIVER for the reasonable and substantiated costs related to the following: providing notifications to affected individuals, the media, or the Secretary, providing credit monitoring services to the affected individuals, if appropriate, for up to one (1) year, any fines and penalties assessed against the RECEIVER directly attributable to Business Associate's Breach, investigation costs, mitigation efforts required under the HIPAA Regulations, and attorney's fees incurred directly as a result of the Breach (but not in connection with any third-party claims).

SECTION VII - MISCELLANEOUS

7.1 Construction. This Agreement shall be construed as broadly as necessary to implement and comply with HIPAA and the HIPAA regulations. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA and HIPAA regulations. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended. Any ambiguity in this Agreement shall be resolved to permit the Parties to comply with the Privacy Rule.

7.2 Notice. All notices and other communications required or permitted pursuant to this Agreement shall be in writing, addressed to the party at the address set forth at the end of this Agreement, or to such other address as either party may designate in writing from time to time. All notices and other communications shall be mailed by registered or certified mail, return receipt requested, postage pre-paid, or transmitted by hand delivery or telegram. All notices shall be effective as of the date of delivery of personal notice or on the date of receipt, whichever is applicable.

7.3 Modification of this Agreement. The parties recognize that this Agreement may need to be modified from time to time to ensure consistency with amendments to and changes in applicable federal and state laws and regulations, including, but not limited to, HIPAA. The parties agree to execute any additional amendments to this Agreement reasonably necessary for each party to comply with HIPAA, including any requirements related to a Chain of Trust Agreement between the parties pursuant to the HIPAA security standards. This Agreement shall not be waived or altered, in whole or in part, except in writing signed by the parties.

7.4 Transferability. This Agreement may not be assigned by either party without the express written consent of the other.

7.5 Governing Law and Venue. This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of Florida, without giving effect to its conflict of laws provisions.

7.6 Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective permitted successors and assigns.

7.7 Execution. This Agreement may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute but one Agreement.

7.8 Gender and Number. The use of the masculine, feminine or neutral genders, and the use of the singular and plural, shall not be given an effect of any exclusion or limitation herein. The use of the word “person” or “party” shall mean and include any individual, trust, corporation, partnership or other entity.

7.9 Priority of Agreement. If any portion of this Agreement is inconsistent with the terms of the Underlying Agreement, the terms of this Agreement shall prevail. Except as set forth above, the remaining provisions of the Underlying Agreement are ratified in their entirety.

7.10 Entire Agreement. This Agreement constitutes the entire Agreement between the parties concerning the subject herein, and supersedes all prior oral or written agreements between the parties on same.

7.11 Beneficiaries. The parties agree that there shall be no incidental or intended third-party beneficiaries under this Agreement, nor shall any other person on entity have rights arising from the same.

IN WITNESS WHEREOF, the parties have hereunto set their hands effective the day and year first above written.

The RECEIVER
Signature: _____
Name: Mary Linzee Branham
Title: Assistant Division Director
Date: June 1, 2016

Address: 2020 Capital Circle, SE
Alexander Building, 3rd Floor
Tallahassee, FL 32301

BUSINESS ASSOCIATE
DocuSigned by: Mayra Ruiz 4D32BC50B6C0401...
Signature: Mayra Ruiz
Name: _____
Title: Managing Member
Date: 6/2/2016

Address: 5000 SW 75 Ave Suite 400
Miami, FL. 33155

The RECEIVER
Signature: _____
Name: Mary Linzee Branham
Title: Assistant Division Director
Date: June 1, 2016

Address: 2020 Capital Circle, SE
Alexander Building, 3rd Floor
Tallahassee, FL 32301

BUSINESS ASSOCIATE
Signature: _____
Name: _____
Title: _____
Date: _____

Address: _____
_____
_____

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (the "Agreement") is entered into by and between the Florida Department of Financial Services, Division of Rehabilitation and Liquidation (the "RECEIVER"), as the RECEIVER of **Florida Healthcare Plus, Inc.**, pursuant to the court Order entered in Leon County, Florida Circuit Court Case No.: 2014-CA-2762, and **MSP Recovery LLC** ("Business Associate"), effective the 1st day of June, 2016. This Agreement shall be incorporated into and made part of the Underlying Agreement (defined below).

RECITALS

WHEREAS, the RECEIVER and Business Associate are parties to an agreement (the "Underlying Agreement") pursuant to which Business Associate provides certain services to the RECEIVER and, in connection with those services, the RECEIVER discloses to Business Associate certain protected health information ("PHI") that is subject to protection under the Health Insurance Portability and Accountability Act of 1996, as amended from time to time ("HIPAA"); and

WHEREAS, the Parties wish to set forth their understandings with regard to the use and disclosure of Protected Health Information ("PHI") by Business Associate in performance of its obligations in compliance with (1) the Privacy and Security Regulations; and (2) Subtitle D of the Health Information Technology for Economic and Clinical Health Act, Title XIII of Public Law 111-005 (42 U.S.C.A. Section 17921 et seq., subchapter III, Privacy).

NOW THEREFORE, for and in consideration of the recitals above and the mutual covenants and conditions herein contained, the RECEIVER and Business Associate enter into this Agreement to provide a full statement of their respective responsibilities.

SECTION I - DEFINITIONS

1.1 Definitions. Capitalized terms shall have the meanings given to them in the Privacy and Security Regulations and HITECH, which are incorporated herein by reference.

SECTION II – OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

2.1 Performance of Agreement. Business Associate, its agents and employees (collectively referred to as "Business Associate") agrees to not use or further disclose PHI other than as permitted or required by this Agreement, the Underlying Agreement, or as Required by Law.

2.2 Safeguards for Protection of PHI. Business Associate agrees to use reasonable safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement. Business Associate agrees to cooperate with the RECEIVER's efforts to mitigate, to the extent practicable, any harmful effects that arise from a use or disclosure of PHI by

Business Associate in violation of the requirements of this Agreement in accordance with 45 C.F.R. Section 164.514(d).

2.3 Electronic Health Information Security and Integrity. Business Associate shall develop, implement, maintain and use appropriate administrative, technical and physical security measures consistent with and in compliance with the Security Regulations and HITECH to preserve the integrity, confidentiality and availability of all electronic PHI that it creates, receives, maintains or transmits on behalf of the RECEIVER. Business Associate shall document and keep these security measures current in accordance with the Security Regulations and HITECH (including 42 U.S.C.A. Section 17931).

2.4 Protection of Exchanged Information in Electronic Transactions. If Business Associate conducts any Standard Transaction for or on behalf of the RECEIVER, Business Associate shall comply, and shall require any subcontractor or agent conducting such Standard Transaction to comply, where applicable.

2.5 Reporting. As described below, Business Associate shall report to the RECEIVER in writing (a) any use or disclosure of PHI not permitted under 45 C.F.R. Section 164, Subpart E, this Agreement, or by law, (b) any Security Incident (as defined below) of which it becomes aware and (c) any Breach of Unsecured PHI in accordance with HITECH, including 42 U.S.C.A. Section 17932; provided, however, that the Parties acknowledge and agree that this Section constitutes written notice by Business Associate to the RECEIVER of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below). "Unsuccessful Security Incidents" will include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI. For purposes of this Agreement, the term "Security Incident" means the successful unauthorized access, use, disclosure, modification or destruction of electronic PHI.

(a) Reporting Security Incidents or Improper Uses or Disclosures. Business Associate shall make the report to the RECEIVER within three (3) business days after Business Associate learns of such unauthorized use or disclosure or Security Incident. In accordance with 45 C.F.R. Section 164.404, any unauthorized use or disclosure of PHI that is a Breach of Unsecured PHI shall be reported as required under subsection (b) below.

(b) Notification of a Breach. Pursuant to 45 C.F.R. Section 164.410, Business Associate shall provide written notice to the RECEIVER of any Breach of Unsecured PHI within three business days after Business Associate discovers the Breach. Business Associate's report to the RECEIVER shall identify or describe: (i) the affected Individual whose Unsecured PHI has been or is reasonably believed to have been accessed, acquired or disclosed, if known; (ii) the incident, including the date of the Breach and the date of the discovery of the Breach, if known; (iii) the types of Unsecured PHI involved in the Breach; (iv) any specific steps the Individual should take to protect him or herself from potential harm related to the

Breach; (v) what the Business Associate is doing to investigate the Breach, to mitigate losses and to protect against further Breaches; (vi) contact procedures for how the Individual can obtain further information from the Business Associate; and (vii) such other information as required by 45 C.F.R. Section 164.404(c).

2.6 Use of Subcontractors. Business Associate shall require each of its subcontractors or agents to whom Business Associate may provide PHI on behalf of the RECEIVER to agree to written contractual provisions that impose at least the same obligations to protect such PHI as are imposed on Business Associate by this Agreement, the Privacy and Security Regulations and HITECH.

2.7 Access to PHI. To the extent Business Associate possesses PHI in a Designated Record Set, Business Associate shall provide access, at the written request of the RECEIVER, to PHI in a Designated Record Set, to the RECEIVER to meet the requirements under Title 45, Section 164.524 of the C.F.R. or applicable state law and to meet the electronic transmission requirements for access to Electronic Health Records by Individuals in accordance with HITECH, including 42 U.S.C.A. Section 17935(e).

2.8 Amendments to PHI. To the extent Business Associate possesses PHI in a Designated Record Set, Business Associate agrees to make any amendments to PHI in a Designated Record Set that the RECEIVER directs or agrees to pursuant to 45 C.F.R. Section 164.526 at the request of the RECEIVER in the time and manner mutually agreed upon by the Parties.

2.9 Allowing the RECEIVER to Monitor Compliance. Business Associate will make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, the RECEIVER available to the Secretary for purposes of the Secretary determining the RECEIVER's compliance with the Privacy Rule and the Security Rule. Upon reasonable notice and prior written request, Business Associate agrees to make available to the RECEIVER during normal business hours, at Business Associate's place of business, such practices, books and records for the purpose of assessing Business Associate's compliance with the Privacy Rule or Security Rule; provided however, that such request does not compromise other proprietary or confidential information of Business Associate or its other customers and is subject to attorney-client and other applicable legal privileges.

2.10 Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

2.11 Marketing. Business Associate shall not receive direct or indirect payment for marketing communications which include PHI without authorization from the RECEIVER or the affected Individuals unless such communication is permitted under the Privacy Regulations and HITECH, including 42 U.S.C.A. Section 17936.

2.12 Sale of PHI. Business Associate shall not receive direct or indirect payment in exchange for any PHI including Electronic Health Records, unless Business Associate receives authorization from the RECEIVER or by all affected Individuals, except as permitted under HITECH including 42 U.S.C.A. Section 17935(d).

SECTION III – PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

3.1 General. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, the RECEIVER as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by the RECEIVER.

3.2 Specific. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI for the proper management and administration of the Business Associate, provided that such disclosures are Required by Law, or are permitted by law provided that Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and that the person will notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached. Additionally, except as limited in this Agreement, Business Associate may use PHI to provide Data Aggregation Services to Receiver (to the extent detailed in the Underlying Agreement) as permitted by 45 C.F.R. Section 164.504(e)(2)(i)(B). Business Associate may also de-identify PHI in accordance with the standards set forth in 45 C.F.R. Section 164.514(b) and may use or disclose such de-identified data unless prohibited by applicable law.

3.3 Access to PHI. Business Associate shall refer to the RECEIVER all requests by Individuals for information about, or accounting of, disclosures of PHI in accordance with 45 C.F.R. Section 164.524 and Section 2.7.

3.4 Documentation of Disclosures. Business Associate agrees to document disclosures of PHI, other than for treatment, payment or healthcare operations or disclosures that are incidental to another permissible disclosure, and information related to such disclosures to the extent required for the RECEIVER to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. Section 164.528.

3.5 Accounting of Disclosures. Business Associate agrees to provide to the RECEIVER, in a reasonable time and manner, but not later than ten (10) business days of the RECEIVER's written request, information collected in accordance with Section 3.4 of this Agreement, to the extent required to permit the RECEIVER to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. Section 164.528. Business Associate shall document all disclosures of PHI and information related to such disclosures as would be required for the RECEIVER to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with Title 45,

Section 164.528 of the C.F.R., including PHI in Electronic Health Records in accordance with HITECH. Business Associate agrees to provide the RECEIVER, information collected in accordance with this paragraph, to permit the RECEIVER to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with Title 45, Section 164.528 of the C.F.R. and HITECH, including 42 U.S.C.A. Section 17935(c) with respect to Electronic Health Records. To the extent a request for an accounting relates to disclosures of PHI in Electronic Health Records by Business Associate, Business Associate shall provide the accounting directly to the RECEIVER upon request.

3.6 Violations of Law. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. Section 164.502(j)(1).

SECTION IV – OBLIGATIONS OF RECEIVER

4.1 Notice of Privacy Practices. The RECEIVER shall provide Business Associate with the notice of privacy practices that [company name], has produced in accordance with 45 C.F.R. Section 164.520, as well as any changes to such notice that may affect Business Associate's use or disclosure of PHI no later than fifteen (15) days prior to the effective date of the change or limitation.

4.2 Changes in Use of PHI. The RECEIVER shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures. Business Associate shall have a reasonable period of time to act on such notice but shall be provided written notice no later than fifteen (15) days prior to the effective date of the change or limitation.

4.3 Restrictions to Use of PHI. The RECEIVER shall notify Business Associate in writing no later than fifteen (15) days prior to the effective date of any restriction on the use or disclosure of PHI that Receiver has agreed to in accordance with 45 C.F.R. Section 164.522. Business Associate shall comply with the terms of such restriction.

4.4 RECEIVER Requests. The RECEIVER represents and warrants it shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the RECEIVER. In the event the RECEIVER requests Business Associate to use or disclose PHI in any manner, and such use or disclosure results in a violation or alleged violation of HIPAA or this Agreement, the RECEIVER will hold harmless Business Associate from all liabilities, costs and damages arising out of or in any way connected with such use or disclosure, including reasonable attorney's fees.

4.5 RECEIVER Disclosures. The RECEIVER represents and warrants to Business Associate that the RECEIVER will not disclose any PHI to Business Associate unless the RECEIVER has obtained any consents and authorizations that may be required by law or otherwise necessary for such disclosure.

SECTION V - TERM/TERMINATION

5.1 Term. The term of this Agreement shall be effective as of the day and year first above written, and shall continue for as long as PHI is being exchanged by the RECEIVER and Business Associate.

5.2 Termination for Cause. Either party may terminate this Agreement and the Underlying Agreement for a material breach of this Agreement by the other party if such breach is not cured within thirty (30) days of receipt of written notice thereof. If neither termination nor cure are feasible, the RECEIVER shall report the violation to the Secretary.

5.3 Termination After Repeated Violations. Either party may terminate the Underlying Agreement if either party repeatedly violates this Agreement or any provision hereof, irrespective of whether, or how promptly, either party may remedy such violation after being notified of the same.

5.4 Effect of Termination. Upon termination of this Agreement, Business Associate shall destroy or return to the RECEIVER all PHI provided by the RECEIVER to the Business Associate or created or received by the Business Associate on behalf of the RECEIVER. If it is infeasible for Business Associate to return or destroy PHI upon termination of this Agreement, Business Associate will maintain the protection required under this Agreement of the PHI for the period of time required under applicable law, or in accordance with Business Associate's internal record retention schedule as in effect from time to time, at which time Business Associate shall destroy the PHI in accordance with acceptable business procedures. This provision shall also apply to PHI in the possession of subcontractors or agents of the Business Associate, and Business Associate shall be fully responsible for such compliance.

5.5 Survival. The rights and obligations of Business Associate under Section 5.4 of this Agreement shall survive the termination of this Agreement.

SECTION VI - BREACH COST REIMBURSEMENT

6.1 Breach Cost Reimbursement. In the event of a Breach caused solely by Business Associate and the HIPAA Regulations require notice to individuals pursuant to 45 C.F.R. Sections 164.404 and 164.406, Business Associate agrees to reimburse the RECEIVER for the reasonable and substantiated costs related to the following: providing notifications to affected individuals, the media, or the Secretary, providing credit monitoring services to the affected individuals, if appropriate, for up to one (1) year, any fines and penalties assessed against the RECEIVER directly attributable to Business Associate's Breach, investigation costs, mitigation efforts required under the HIPAA Regulations, and attorney's fees incurred directly as a result of the Breach (but not in connection with any third-party claims).

SECTION VII - MISCELLANEOUS

7.1 Construction. This Agreement shall be construed as broadly as necessary to implement and comply with HIPAA and the HIPAA regulations. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA and HIPAA regulations. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended. Any ambiguity in this Agreement shall be resolved to permit the Parties to comply with the Privacy Rule.

7.2 Notice. All notices and other communications required or permitted pursuant to this Agreement shall be in writing, addressed to the party at the address set forth at the end of this Agreement, or to such other address as either party may designate in writing from time to time. All notices and other communications shall be mailed by registered or certified mail, return receipt requested, postage pre-paid, or transmitted by hand delivery or telegram. All notices shall be effective as of the date of delivery of personal notice or on the date of receipt, whichever is applicable.

7.3 Modification of this Agreement. The parties recognize that this Agreement may need to be modified from time to time to ensure consistency with amendments to and changes in applicable federal and state laws and regulations, including, but not limited to, HIPAA. The parties agree to execute any additional amendments to this Agreement reasonably necessary for each party to comply with HIPAA, including any requirements related to a Chain of Trust Agreement between the parties pursuant to the HIPAA security standards. This Agreement shall not be waived or altered, in whole or in part, except in writing signed by the parties.

7.4 Transferability. This Agreement may not be assigned by either party without the express written consent of the other.

7.5 Governing Law and Venue. This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of Florida, without giving effect to its conflict of laws provisions.

7.6 Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective permitted successors and assigns.

7.7 Execution. This Agreement may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute but one Agreement.

7.8 Gender and Number. The use of the masculine, feminine or neutral genders, and the use of the singular and plural, shall not be given an effect of any exclusion or limitation herein. The use of the word “person” or “party” shall mean and include any individual, trust, corporation, partnership or other entity.

7.9 Priority of Agreement. If any portion of this Agreement is inconsistent with the terms of the Underlying Agreement, the terms of this Agreement shall prevail. Except as set forth above, the remaining provisions of the Underlying Agreement are ratified in their entirety.

7.10 Entire Agreement. This Agreement constitutes the entire Agreement between the parties concerning the subject herein, and supersedes all prior oral or written agreements between the parties on same.

7.11 Beneficiaries. The parties agree that there shall be no incidental or intended third-party beneficiaries under this Agreement, nor shall any other person on entity have rights arising from the same.

IN WITNESS WHEREOF, the parties have hereunto set their hands effective the day and year first above written.

The RECEIVER
Signature: _____
Name: Mary Linzee Branham
Title: Asst. Division Director
Date: June 1, 2016

Address: 2020 Capital Circle, SE
Alexander Building, 3rd Floor
Tallahassee, FL 32301

BUSINESS ASSOCIATE
Signature: Walter Lista
DocuSigned by: Walter Lista AA9C883CD387438...
Name: Executive Vice President
Title:
Date: 6/2/2016

Address: 5000 SW 75 Ave Suite 400
Miami, FL. 33155

The RECEIVER
Signature: _____
Name: Mary Linzee Branham
Title: Asst. Division Director
Date: June 1, 2016

Address: 2020 Capital Circle, SE
Alexander Building, 3rd Floor
Tallahassee, FL 32301

BUSINESS ASSOCIATE
Signature: _____
Name: _____
Title: _____
Date: _____

Address: _____

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (the "Agreement") is entered into by and between the Florida Department of Financial Services, Division of Rehabilitation and Liquidation (the "RECEIVER"), as the RECEIVER of **Florida Healthcare Plus, Inc.**, pursuant to the court Order entered in Leon County, Florida Circuit Court Case No.: 2014-CA-2762, and **MSP Recovery Services, LLC** ("Business Associate"), effective the 1st day of June, 2016. This Agreement shall be incorporated into and made part of the Underlying Agreement (defined below).

RECITALS

WHEREAS, the RECEIVER and Business Associate are parties to an agreement (the "Underlying Agreement") pursuant to which Business Associate provides certain services to the RECEIVER and, in connection with those services, the RECEIVER discloses to Business Associate certain protected health information ("PHI") that is subject to protection under the Health Insurance Portability and Accountability Act of 1996, as amended from time to time ("HIPAA"); and

WHEREAS, the Parties wish to set forth their understandings with regard to the use and disclosure of Protected Health Information ("PHI") by Business Associate in performance of its obligations in compliance with (1) the Privacy and Security Regulations; and (2) Subtitle D of the Health Information Technology for Economic and Clinical Health Act, Title XIII of Public Law 111-005 (42 U.S.C.A. Section 17921 et seq., subchapter III, Privacy).

NOW THEREFORE, for and in consideration of the recitals above and the mutual covenants and conditions herein contained, the RECEIVER and Business Associate enter into this Agreement to provide a full statement of their respective responsibilities.

SECTION I - DEFINITIONS

1.1 Definitions. Capitalized terms shall have the meanings given to them in the Privacy and Security Regulations and HITECH, which are incorporated herein by reference.

SECTION II – OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

2.1 Performance of Agreement. Business Associate, its agents and employees (collectively referred to as "Business Associate") agrees to not use or further disclose PHI other than as permitted or required by this Agreement, the Underlying Agreement, or as Required by Law.

2.2 Safeguards for Protection of PHI. Business Associate agrees to use reasonable safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement. Business Associate agrees to cooperate with the RECEIVER's efforts to mitigate, to the extent practicable, any harmful effects that arise from a use or disclosure of PHI by

Business Associate in violation of the requirements of this Agreement in accordance with 45 C.F.R. Section 164.514(d).

2.3 Electronic Health Information Security and Integrity. Business Associate shall develop, implement, maintain and use appropriate administrative, technical and physical security measures consistent with and in compliance with the Security Regulations and HITECH to preserve the integrity, confidentiality and availability of all electronic PHI that it creates, receives, maintains or transmits on behalf of the RECEIVER. Business Associate shall document and keep these security measures current in accordance with the Security Regulations and HITECH (including 42 U.S.C.A. Section 17931).

2.4 Protection of Exchanged Information in Electronic Transactions. If Business Associate conducts any Standard Transaction for or on behalf of the RECEIVER, Business Associate shall comply, and shall require any subcontractor or agent conducting such Standard Transaction to comply, where applicable.

2.5 Reporting. As described below, Business Associate shall report to the RECEIVER in writing (a) any use or disclosure of PHI not permitted under 45 C.F.R. Section 164, Subpart E, this Agreement, or by law, (b) any Security Incident (as defined below) of which it becomes aware and (c) any Breach of Unsecured PHI in accordance with HITECH, including 42 U.S.C.A. Section 17932; provided, however, that the Parties acknowledge and agree that this Section constitutes written notice by Business Associate to the RECEIVER of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below). "Unsuccessful Security Incidents" will include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI. For purposes of this Agreement, the term "Security Incident" means the successful unauthorized access, use, disclosure, modification or destruction of electronic PHI.

(a) Reporting Security Incidents or Improper Uses or Disclosures. Business Associate shall make the report to the RECEIVER within three (3) business days after Business Associate learns of such unauthorized use or disclosure or Security Incident. In accordance with 45 C.F.R. Section 164.404, any unauthorized use or disclosure of PHI that is a Breach of Unsecured PHI shall be reported as required under subsection (b) below.

(b) Notification of a Breach. Pursuant to 45 C.F.R. Section 164.410, Business Associate shall provide written notice to the RECEIVER of any Breach of Unsecured PHI within three business days after Business Associate discovers the Breach. Business Associate's report to the RECEIVER shall identify or describe: (i) the affected Individual whose Unsecured PHI has been or is reasonably believed to have been accessed, acquired or disclosed, if known; (ii) the incident, including the date of the Breach and the date of the discovery of the Breach, if known; (iii) the types of Unsecured PHI involved in the Breach; (iv) any specific steps the Individual should take to protect him or herself from potential harm related to the

Breach; (v) what the Business Associate is doing to investigate the Breach, to mitigate losses and to protect against further Breaches; (vi) contact procedures for how the Individual can obtain further information from the Business Associate; and (vii) such other information as required by 45 C.F.R. Section 164.404(c).

2.6 Use of Subcontractors. Business Associate shall require each of its subcontractors or agents to whom Business Associate may provide PHI on behalf of the RECEIVER to agree to written contractual provisions that impose at least the same obligations to protect such PHI as are imposed on Business Associate by this Agreement, the Privacy and Security Regulations and HITECH.

2.7 Access to PHI. To the extent Business Associate possesses PHI in a Designated Record Set, Business Associate shall provide access, at the written request of the RECEIVER, to PHI in a Designated Record Set, to the RECEIVER to meet the requirements under Title 45, Section 164.524 of the C.F.R. or applicable state law and to meet the electronic transmission requirements for access to Electronic Health Records by Individuals in accordance with HITECH, including 42 U.S.C.A. Section 17935(e).

2.8 Amendments to PHI. To the extent Business Associate possesses PHI in a Designated Record Set, Business Associate agrees to make any amendments to PHI in a Designated Record Set that the RECEIVER directs or agrees to pursuant to 45 C.F.R. Section 164.526 at the request of the RECEIVER in the time and manner mutually agreed upon by the Parties.

2.9 Allowing the RECEIVER to Monitor Compliance. Business Associate will make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, the RECEIVER available to the Secretary for purposes of the Secretary determining the RECEIVER's compliance with the Privacy Rule and the Security Rule. Upon reasonable notice and prior written request, Business Associate agrees to make available to the RECEIVER during normal business hours, at Business Associate's place of business, such practices, books and records for the purpose of assessing Business Associate's compliance with the Privacy Rule or Security Rule; provided however, that such request does not compromise other proprietary or confidential information of Business Associate or its other customers and is subject to attorney-client and other applicable legal privileges.

2.10 Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

2.11 Marketing. Business Associate shall not receive direct or indirect payment for marketing communications which include PHI without authorization from the RECEIVER or the affected Individuals unless such communication is permitted under the Privacy Regulations and HITECH, including 42 U.S.C.A. Section 17936.

2.12 Sale of PHI. Business Associate shall not receive direct or indirect payment in exchange for any PHI including Electronic Health Records, unless Business Associate receives authorization from the RECEIVER or by all affected Individuals, except as permitted under HITECH including 42 U.S.C.A. Section 17935(d).

SECTION III – PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

3.1 General. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, the RECEIVER as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by the RECEIVER.

3.2 Specific. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI for the proper management and administration of the Business Associate, provided that such disclosures are Required by Law, or are permitted by law provided that Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and that the person will notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached. Additionally, except as limited in this Agreement, Business Associate may use PHI to provide Data Aggregation Services to Receiver (to the extent detailed in the Underlying Agreement) as permitted by 45 C.F.R. Section 164.504(e)(2)(i)(B). Business Associate may also de-identify PHI in accordance with the standards set forth in 45 C.F.R. Section 164.514(b) and may use or disclose such de-identified data unless prohibited by applicable law.

3.3 Access to PHI. Business Associate shall refer to the RECEIVER all requests by Individuals for information about, or accounting of, disclosures of PHI in accordance with 45 C.F.R. Section 164.524 and Section 2.7.

3.4 Documentation of Disclosures. Business Associate agrees to document disclosures of PHI, other than for treatment, payment or healthcare operations or disclosures that are incidental to another permissible disclosure, and information related to such disclosures to the extent required for the RECEIVER to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. Section 164.528.

3.5 Accounting of Disclosures. Business Associate agrees to provide to the RECEIVER, in a reasonable time and manner, but not later than ten (10) business days of the RECEIVER's written request, information collected in accordance with Section 3.4 of this Agreement, to the extent required to permit the RECEIVER to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. Section 164.528. Business Associate shall document all disclosures of PHI and information related to such disclosures as would be required for the RECEIVER to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with Title 45,

Section 164.528 of the C.F.R., including PHI in Electronic Health Records in accordance with HITECH. Business Associate agrees to provide the RECEIVER, information collected in accordance with this paragraph, to permit the RECEIVER to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with Title 45, Section 164.528 of the C.F.R. and HITECH, including 42 U.S.C.A. Section 17935(c) with respect to Electronic Health Records. To the extent a request for an accounting relates to disclosures of PHI in Electronic Health Records by Business Associate, Business Associate shall provide the accounting directly to the RECEIVER upon request.

3.6 Violations of Law. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. Section 164.502(j)(1).

SECTION IV – OBLIGATIONS OF RECEIVER

4.1 Notice of Privacy Practices. The RECEIVER shall provide Business Associate with the notice of privacy practices that [company name], has produced in accordance with 45 C.F.R. Section 164.520, as well as any changes to such notice that may affect Business Associate's use or disclosure of PHI no later than fifteen (15) days prior to the effective date of the change or limitation.

4.2 Changes in Use of PHI. The RECEIVER shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures. Business Associate shall have a reasonable period of time to act on such notice but shall be provided written notice no later than fifteen (15) days prior to the effective date of the change or limitation.

4.3 Restrictions to Use of PHI. The RECEIVER shall notify Business Associate in writing no later than fifteen (15) days prior to the effective date of any restriction on the use or disclosure of PHI that Receiver has agreed to in accordance with 45 C.F.R. Section 164.522. Business Associate shall comply with the terms of such restriction.

4.4 RECEIVER Requests. The RECEIVER represents and warrants it shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the RECEIVER. In the event the RECEIVER requests Business Associate to use or disclose PHI in any manner, and such use or disclosure results in a violation or alleged violation of HIPAA or this Agreement, the RECEIVER will hold harmless Business Associate from all liabilities, costs and damages arising out of or in any way connected with such use or disclosure, including reasonable attorney's fees.

4.5 RECEIVER Disclosures. The RECEIVER represents and warrants to Business Associate that the RECEIVER will not disclose any PHI to Business Associate unless the RECEIVER has obtained any consents and authorizations that may be required by law or otherwise necessary for such disclosure.

SECTION V - TERM/TERMINATION

5.1 Term. The term of this Agreement shall be effective as of the day and year first above written, and shall continue for as long as PHI is being exchanged by the RECEIVER and Business Associate.

5.2 Termination for Cause. Either party may terminate this Agreement and the Underlying Agreement for a material breach of this Agreement by the other party if such breach is not cured within thirty (30) days of receipt of written notice thereof. If neither termination nor cure are feasible, the RECEIVER shall report the violation to the Secretary.

5.3 Termination After Repeated Violations. Either party may terminate the Underlying Agreement if either party repeatedly violates this Agreement or any provision hereof, irrespective of whether, or how promptly, either party may remedy such violation after being notified of the same.

5.4 Effect of Termination. Upon termination of this Agreement, Business Associate shall destroy or return to the RECEIVER all PHI provided by the RECEIVER to the Business Associate or created or received by the Business Associate on behalf of the RECEIVER. If it is infeasible for Business Associate to return or destroy PHI upon termination of this Agreement, Business Associate will maintain the protection required under this Agreement of the PHI for the period of time required under applicable law, or in accordance with Business Associate's internal record retention schedule as in effect from time to time, at which time Business Associate shall destroy the PHI in accordance with acceptable business procedures. This provision shall also apply to PHI in the possession of subcontractors or agents of the Business Associate, and Business Associate shall be fully responsible for such compliance.

5.5 Survival. The rights and obligations of Business Associate under Section 5.4 of this Agreement shall survive the termination of this Agreement.

SECTION VI - BREACH COST REIMBURSEMENT

6.1 Breach Cost Reimbursement. In the event of a Breach caused solely by Business Associate and the HIPAA Regulations require notice to individuals pursuant to 45 C.F.R. Sections 164.404 and 164.406, Business Associate agrees to reimburse the RECEIVER for the reasonable and substantiated costs related to the following: providing notifications to affected individuals, the media, or the Secretary, providing credit monitoring services to the affected individuals, if appropriate, for up to one (1) year, any fines and penalties assessed against the RECEIVER directly attributable to Business Associate's Breach, investigation costs, mitigation efforts required under the HIPAA Regulations, and attorney's fees incurred directly as a result of the Breach (but not in connection with any third-party claims).

SECTION VII - MISCELLANEOUS

7.1 Construction. This Agreement shall be construed as broadly as necessary to implement and comply with HIPAA and the HIPAA regulations. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA and HIPAA regulations. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended. Any ambiguity in this Agreement shall be resolved to permit the Parties to comply with the Privacy Rule.

7.2 Notice. All notices and other communications required or permitted pursuant to this Agreement shall be in writing, addressed to the party at the address set forth at the end of this Agreement, or to such other address as either party may designate in writing from time to time. All notices and other communications shall be mailed by registered or certified mail, return receipt requested, postage pre-paid, or transmitted by hand delivery or telegram. All notices shall be effective as of the date of delivery of personal notice or on the date of receipt, whichever is applicable.

7.3 Modification of this Agreement. The parties recognize that this Agreement may need to be modified from time to time to ensure consistency with amendments to and changes in applicable federal and state laws and regulations, including, but not limited to, HIPAA. The parties agree to execute any additional amendments to this Agreement reasonably necessary for each party to comply with HIPAA, including any requirements related to a Chain of Trust Agreement between the parties pursuant to the HIPAA security standards. This Agreement shall not be waived or altered, in whole or in part, except in writing signed by the parties.

7.4 Transferability. This Agreement may not be assigned by either party without the express written consent of the other.

7.5 Governing Law and Venue. This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of Florida, without giving effect to its conflict of laws provisions.

7.6 Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective permitted successors and assigns.

7.7 Execution. This Agreement may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute but one Agreement.

7.8 Gender and Number. The use of the masculine, feminine or neutral genders, and the use of the singular and plural, shall not be given an effect of any exclusion or limitation herein. The use of the word “person” or “party” shall mean and include any individual, trust, corporation, partnership or other entity.

7.9 Priority of Agreement. If any portion of this Agreement is inconsistent with the terms of the Underlying Agreement, the terms of this Agreement shall prevail. Except as set forth above, the remaining provisions of the Underlying Agreement are ratified in their entirety.

7.10 Entire Agreement. This Agreement constitutes the entire Agreement between the parties concerning the subject herein, and supersedes all prior oral or written agreements between the parties on same.

7.11 Beneficiaries. The parties agree that there shall be no incidental or intended third-party beneficiaries under this Agreement, nor shall any other person on entity have rights arising from the same.

IN WITNESS WHEREOF, the parties have hereunto set their hands effective the day and year first above written.

The RECEIVER
Signature: _____
Name: Mary Linzee Branham
Title: Asst. Division Director
Date: June 1, 2016

Address: 2020 Capital Circle, SE
Alexander Building, 3rd Floor
Tallahassee, FL 32301

BUSINESS ASSOCIATE
Signature: Walter Lista
DocuSigned by: Walter Lista AA9C883CD387438...
Name: Walter Lista
Title: Executive Vice President
Date: 6/2/2016

Address: 5000 SW 75 Ave
Miami, Fl 33155

The RECEIVER
Signature: _____
Name: Mary Linzee Branham
Title: Asst. Division Director
Date: June 1, 2016

Address: 2020 Capital Circle, SE
Alexander Building, 3rd Floor
Tallahassee, FL 32301

BUSINESS ASSOCIATE
Signature: _____
Name: _____
Title: _____
Date: _____

Address: _____

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (the "Agreement") is entered into by and between the Florida Department of Financial Services, Division of Rehabilitation and Liquidation (the "RECEIVER"), as the RECEIVER of **Florida Healthcare Plus, Inc.**, pursuant to the court Order entered in Leon County, Florida Circuit Court Case No.: 2014-CA-2762, and **MSPA Claims 1, LLC** ("Business Associate"), effective the 1st day of June, 2016. This Agreement shall be incorporated into and made part of the Underlying Agreement (defined below).

RECITALS

WHEREAS, the RECEIVER and Business Associate are parties to an agreement (the "Underlying Agreement") pursuant to which Business Associate provides certain services to the RECEIVER and, in connection with those services, the RECEIVER discloses to Business Associate certain protected health information ("PHI") that is subject to protection under the Health Insurance Portability and Accountability Act of 1996, as amended from time to time ("HIPAA"); and

WHEREAS, the Parties wish to set forth their understandings with regard to the use and disclosure of Protected Health Information ("PHI") by Business Associate in performance of its obligations in compliance with (1) the Privacy and Security Regulations; and (2) Subtitle D of the Health Information Technology for Economic and Clinical Health Act, Title XIII of Public Law 111-005 (42 U.S.C.A. Section 17921 et seq., subchapter III, Privacy).

NOW THEREFORE, for and in consideration of the recitals above and the mutual covenants and conditions herein contained, the RECEIVER and Business Associate enter into this Agreement to provide a full statement of their respective responsibilities.

SECTION I - DEFINITIONS

1.1 Definitions. Capitalized terms shall have the meanings given to them in the Privacy and Security Regulations and HITECH, which are incorporated herein by reference.

SECTION II – OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

2.1 Performance of Agreement. Business Associate, its agents and employees (collectively referred to as "Business Associate") agrees to not use or further disclose PHI other than as permitted or required by this Agreement, the Underlying Agreement, or as Required by Law.

2.2 Safeguards for Protection of PHI. Business Associate agrees to use reasonable safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement. Business Associate agrees to cooperate with the RECEIVER's efforts to mitigate, to the extent practicable, any harmful effects that arise from a use or disclosure of PHI by

Business Associate in violation of the requirements of this Agreement in accordance with 45 C.F.R. Section 164.514(d).

2.3 Electronic Health Information Security and Integrity. Business Associate shall develop, implement, maintain and use appropriate administrative, technical and physical security measures consistent with and in compliance with the Security Regulations and HITECH to preserve the integrity, confidentiality and availability of all electronic PHI that it creates, receives, maintains or transmits on behalf of the RECEIVER. Business Associate shall document and keep these security measures current in accordance with the Security Regulations and HITECH (including 42 U.S.C.A. Section 17931).

2.4 Protection of Exchanged Information in Electronic Transactions. If Business Associate conducts any Standard Transaction for or on behalf of the RECEIVER, Business Associate shall comply, and shall require any subcontractor or agent conducting such Standard Transaction to comply, where applicable.

2.5 Reporting. As described below, Business Associate shall report to the RECEIVER in writing (a) any use or disclosure of PHI not permitted under 45 C.F.R. Section 164, Subpart E, this Agreement, or by law, (b) any Security Incident (as defined below) of which it becomes aware and (c) any Breach of Unsecured PHI in accordance with HITECH, including 42 U.S.C.A. Section 17932; provided, however, that the Parties acknowledge and agree that this Section constitutes written notice by Business Associate to the RECEIVER of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below). "Unsuccessful Security Incidents" will include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI. For purposes of this Agreement, the term "Security Incident" means the successful unauthorized access, use, disclosure, modification or destruction of electronic PHI.

(a) Reporting Security Incidents or Improper Uses or Disclosures. Business Associate shall make the report to the RECEIVER within three (3) business days after Business Associate learns of such unauthorized use or disclosure or Security Incident. In accordance with 45 C.F.R. Section 164.404, any unauthorized use or disclosure of PHI that is a Breach of Unsecured PHI shall be reported as required under subsection (b) below.

(b) Notification of a Breach. Pursuant to 45 C.F.R. Section 164.410, Business Associate shall provide written notice to the RECEIVER of any Breach of Unsecured PHI within three business days after Business Associate discovers the Breach. Business Associate's report to the RECEIVER shall identify or describe: (i) the affected Individual whose Unsecured PHI has been or is reasonably believed to have been accessed, acquired or disclosed, if known; (ii) the incident, including the date of the Breach and the date of the discovery of the Breach, if known; (iii) the types of Unsecured PHI involved in the Breach; (iv) any specific steps the Individual should take to protect him or herself from potential harm related to the

Breach; (v) what the Business Associate is doing to investigate the Breach, to mitigate losses and to protect against further Breaches; (vi) contact procedures for how the Individual can obtain further information from the Business Associate; and (vii) such other information as required by 45 C.F.R. Section 164.404(c).

2.6 Use of Subcontractors. Business Associate shall require each of its subcontractors or agents to whom Business Associate may provide PHI on behalf of the RECEIVER to agree to written contractual provisions that impose at least the same obligations to protect such PHI as are imposed on Business Associate by this Agreement, the Privacy and Security Regulations and HITECH.

2.7 Access to PHI. To the extent Business Associate possesses PHI in a Designated Record Set, Business Associate shall provide access, at the written request of the RECEIVER, to PHI in a Designated Record Set, to the RECEIVER to meet the requirements under Title 45, Section 164.524 of the C.F.R. or applicable state law and to meet the electronic transmission requirements for access to Electronic Health Records by Individuals in accordance with HITECH, including 42 U.S.C.A. Section 17935(e).

2.8 Amendments to PHI. To the extent Business Associate possesses PHI in a Designated Record Set, Business Associate agrees to make any amendments to PHI in a Designated Record Set that the RECEIVER directs or agrees to pursuant to 45 C.F.R. Section 164.526 at the request of the RECEIVER in the time and manner mutually agreed upon by the Parties.

2.9 Allowing the RECEIVER to Monitor Compliance. Business Associate will make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, the RECEIVER available to the Secretary for purposes of the Secretary determining the RECEIVER's compliance with the Privacy Rule and the Security Rule. Upon reasonable notice and prior written request, Business Associate agrees to make available to the RECEIVER during normal business hours, at Business Associate's place of business, such practices, books and records for the purpose of assessing Business Associate's compliance with the Privacy Rule or Security Rule; provided however, that such request does not compromise other proprietary or confidential information of Business Associate or its other customers and is subject to attorney-client and other applicable legal privileges.

2.10 Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

2.11 Marketing. Business Associate shall not receive direct or indirect payment for marketing communications which include PHI without authorization from the RECEIVER or the affected Individuals unless such communication is permitted under the Privacy Regulations and HITECH, including 42 U.S.C.A. Section 17936.

2.12 Sale of PHI. Business Associate shall not receive direct or indirect payment in exchange for any PHI including Electronic Health Records, unless Business Associate receives authorization from the RECEIVER or by all affected Individuals, except as permitted under HITECH including 42 U.S.C.A. Section 17935(d).

SECTION III – PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

3.1 General. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, the RECEIVER as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by the RECEIVER.

3.2 Specific. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI for the proper management and administration of the Business Associate, provided that such disclosures are Required by Law, or are permitted by law provided that Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and that the person will notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached. Additionally, except as limited in this Agreement, Business Associate may use PHI to provide Data Aggregation Services to Receiver (to the extent detailed in the Underlying Agreement) as permitted by 45 C.F.R. Section 164.504(e)(2)(i)(B). Business Associate may also de-identify PHI in accordance with the standards set forth in 45 C.F.R. Section 164.514(b) and may use or disclose such de-identified data unless prohibited by applicable law.

3.3 Access to PHI. Business Associate shall refer to the RECEIVER all requests by Individuals for information about, or accounting of, disclosures of PHI in accordance with 45 C.F.R. Section 164.524 and Section 2.7.

3.4 Documentation of Disclosures. Business Associate agrees to document disclosures of PHI, other than for treatment, payment or healthcare operations or disclosures that are incidental to another permissible disclosure, and information related to such disclosures to the extent required for the RECEIVER to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. Section 164.528.

3.5 Accounting of Disclosures. Business Associate agrees to provide to the RECEIVER, in a reasonable time and manner, but not later than ten (10) business days of the RECEIVER's written request, information collected in accordance with Section 3.4 of this Agreement, to the extent required to permit the RECEIVER to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. Section 164.528. Business Associate shall document all disclosures of PHI and information related to such disclosures as would be required for the RECEIVER to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with Title 45,

Section 164.528 of the C.F.R., including PHI in Electronic Health Records in accordance with HITECH. Business Associate agrees to provide the RECEIVER, information collected in accordance with this paragraph, to permit the RECEIVER to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with Title 45, Section 164.528 of the C.F.R. and HITECH, including 42 U.S.C.A. Section 17935(c) with respect to Electronic Health Records. To the extent a request for an accounting relates to disclosures of PHI in Electronic Health Records by Business Associate, Business Associate shall provide the accounting directly to the RECEIVER upon request.

3.6 Violations of Law. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. Section 164.502(j)(1).

SECTION IV – OBLIGATIONS OF RECEIVER

4.1 Notice of Privacy Practices. The RECEIVER shall provide Business Associate with the notice of privacy practices that [company name], has produced in accordance with 45 C.F.R. Section 164.520, as well as any changes to such notice that may affect Business Associate's use or disclosure of PHI no later than fifteen (15) days prior to the effective date of the change or limitation.

4.2 Changes in Use of PHI. The RECEIVER shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures. Business Associate shall have a reasonable period of time to act on such notice but shall be provided written notice no later than fifteen (15) days prior to the effective date of the change or limitation.

4.3 Restrictions to Use of PHI. The RECEIVER shall notify Business Associate in writing no later than fifteen (15) days prior to the effective date of any restriction on the use or disclosure of PHI that Receiver has agreed to in accordance with 45 C.F.R. Section 164.522. Business Associate shall comply with the terms of such restriction.

4.4 RECEIVER Requests. The RECEIVER represents and warrants it shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the RECEIVER. In the event the RECEIVER requests Business Associate to use or disclose PHI in any manner, and such use or disclosure results in a violation or alleged violation of HIPAA or this Agreement, the RECEIVER will hold harmless Business Associate from all liabilities, costs and damages arising out of or in any way connected with such use or disclosure, including reasonable attorney's fees.

4.5 RECEIVER Disclosures. The RECEIVER represents and warrants to Business Associate that the RECEIVER will not disclose any PHI to Business Associate unless the RECEIVER has obtained any consents and authorizations that may be required by law or otherwise necessary for such disclosure.

SECTION V - TERM/TERMINATION

5.1 Term. The term of this Agreement shall be effective as of the day and year first above written, and shall continue for as long as PHI is being exchanged by the RECEIVER and Business Associate.

5.2 Termination for Cause. Either party may terminate this Agreement and the Underlying Agreement for a material breach of this Agreement by the other party if such breach is not cured within thirty (30) days of receipt of written notice thereof. If neither termination nor cure are feasible, the RECEIVER shall report the violation to the Secretary.

5.3 Termination After Repeated Violations. Either party may terminate the Underlying Agreement if either party repeatedly violates this Agreement or any provision hereof, irrespective of whether, or how promptly, either party may remedy such violation after being notified of the same.

5.4 Effect of Termination. Upon termination of this Agreement, Business Associate shall destroy or return to the RECEIVER all PHI provided by the RECEIVER to the Business Associate or created or received by the Business Associate on behalf of the RECEIVER. If it is infeasible for Business Associate to return or destroy PHI upon termination of this Agreement, Business Associate will maintain the protection required under this Agreement of the PHI for the period of time required under applicable law, or in accordance with Business Associate's internal record retention schedule as in effect from time to time, at which time Business Associate shall destroy the PHI in accordance with acceptable business procedures. This provision shall also apply to PHI in the possession of subcontractors or agents of the Business Associate, and Business Associate shall be fully responsible for such compliance.

5.5 Survival. The rights and obligations of Business Associate under Section 5.4 of this Agreement shall survive the termination of this Agreement.

SECTION VI - BREACH COST REIMBURSEMENT

6.1 Breach Cost Reimbursement. In the event of a Breach caused solely by Business Associate and the HIPAA Regulations require notice to individuals pursuant to 45 C.F.R. Sections 164.404 and 164.406, Business Associate agrees to reimburse the RECEIVER for the reasonable and substantiated costs related to the following: providing notifications to affected individuals, the media, or the Secretary, providing credit monitoring services to the affected individuals, if appropriate, for up to one (1) year, any fines and penalties assessed against the RECEIVER directly attributable to Business Associate's Breach, investigation costs, mitigation efforts required under the HIPAA Regulations, and attorney's fees incurred directly as a result of the Breach (but not in connection with any third-party claims).

SECTION VII - MISCELLANEOUS

7.1 Construction. This Agreement shall be construed as broadly as necessary to implement and comply with HIPAA and the HIPAA regulations. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA and HIPAA regulations. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended. Any ambiguity in this Agreement shall be resolved to permit the Parties to comply with the Privacy Rule.

7.2 Notice. All notices and other communications required or permitted pursuant to this Agreement shall be in writing, addressed to the party at the address set forth at the end of this Agreement, or to such other address as either party may designate in writing from time to time. All notices and other communications shall be mailed by registered or certified mail, return receipt requested, postage pre-paid, or transmitted by hand delivery or telegram. All notices shall be effective as of the date of delivery of personal notice or on the date of receipt, whichever is applicable.

7.3 Modification of this Agreement. The parties recognize that this Agreement may need to be modified from time to time to ensure consistency with amendments to and changes in applicable federal and state laws and regulations, including, but not limited to, HIPAA. The parties agree to execute any additional amendments to this Agreement reasonably necessary for each party to comply with HIPAA, including any requirements related to a Chain of Trust Agreement between the parties pursuant to the HIPAA security standards. This Agreement shall not be waived or altered, in whole or in part, except in writing signed by the parties.

7.4 Transferability. This Agreement may not be assigned by either party without the express written consent of the other.

7.5 Governing Law and Venue. This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of Florida, without giving effect to its conflict of laws provisions.

7.6 Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective permitted successors and assigns.

7.7 Execution. This Agreement may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute but one Agreement.

7.8 Gender and Number. The use of the masculine, feminine or neutral genders, and the use of the singular and plural, shall not be given an effect of any exclusion or limitation herein. The use of the word “person” or “party” shall mean and include any individual, trust, corporation, partnership or other entity.

7.9 Priority of Agreement. If any portion of this Agreement is inconsistent with the terms of the Underlying Agreement, the terms of this Agreement shall prevail. Except as set forth above, the remaining provisions of the Underlying Agreement are ratified in their entirety.

7.10 Entire Agreement. This Agreement constitutes the entire Agreement between the parties concerning the subject herein, and supersedes all prior oral or written agreements between the parties on same.

7.11 Beneficiaries. The parties agree that there shall be no incidental or intended third-party beneficiaries under this Agreement, nor shall any other person on entity have rights arising from the same.

IN WITNESS WHEREOF, the parties have hereunto set their hands effective the day and year first above written.

[signature page follows]

The RECEIVER
Signature: _____
Name: Mary Linzee Branham
Title: Asst. Division Director
Date: June 1, 2016

Address: 2020 Capital Circle, SE
Alexander Building, 3rd Floor
Tallahassee, FL 32301

BUSINESS ASSOCIATE
Signature: DocuSigned by: Walter Lista AA9C883CD387438...
Name: Walter Lista
Title: Executive Vice President
Date: 6/1/2016

Address: 5000 SW 75 Ave Suite 400
Miami, Fl. 33155

The RECEIVER
Signature: _____
Name: Mary Linzee Branham
Title: Asst. Division Director
Date: June 1, 2016

Address: 2020 Capital Circle, SE
Alexander Building, 3rd Floor
Tallahassee, FL 32301

BUSINESS ASSOCIATE
Signature: _____
Name: _____
Title: _____
Date: _____

Address: _____

EXHIBIT E

Filing # 42738336 E-Filed 06/14/2016 04:21:46 PM

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

In Re: The Receivership of

Case No.: 2014 CA 2762

FLORIDA HEALTHCARE PLUS, INC.
_____/

ORDER APPROVING SETTLEMENT AGREEMENT BETWEEN RECEIVER AND LA LEY RECOVERY SYSTEMS, INC.

THIS CAUSE was considered on the *Receiver's Motion for Order Approving Settlement Agreement Between Receiver and La Ley Recovery Systems, Inc.* After review of the Motion, the Settlement Agreement, and being otherwise fully advised in all material premises, it is hereby **ORDERED and ADJUDGED as follows**:

1. Subject to this Court's approval, and based upon the rationale set forth in the agreement, including the Receiver's audit of La Ley's system and methodologies, the Receiver has entered into a Settlement Agreement with La Ley Recovery Systems, Inc. to settle the dispute raised by the Receiver's *Petition to Enjoin La Ley Recovery Systems Inc., Its Affiliates, Assignees, Representatives, Agents, Subcontractors, and All Other Entities From Further Collection Activities on Behalf Of Florida Healthcare Plus, Inc.*

2. The Court finds that the Settlement Agreement was negotiated in good faith and is in the best interest of the estate of Florida Healthcare Plus, Inc.

3. The *Receiver's Motion for Order Approving Settlement Agreement Between Receiver and La Ley Recovery Systems, Inc.* is hereby GRANTED.

4. The Court retains jurisdiction to enforce the terms of the Settlement Agreement.

DONE AND ORDERED in Chambers at Leon County Courthouse, Tallahassee, Florida, on this the 14 of June 2016.

GEORGE S. REYNOLDS, III
CIRCUIT JUDGE

Copies furnished to:
Jamila G. Gooden, Esq., at jamila.gooden@myfloridacfo.com
Yamile Benitez-Torviso, Esq. at yamile.benitez-torviso@myfloridacfo.com
E. Barclay Cale, Esq. at bcale@calelaw.com
James A. Mckee, JMcKee@foley.com
John H. Ruiz, Esq., serve@lawofficeslaley.com
Gustavo J. Losa, glosa@lawofficeslaley.com

EXHIBIT F

Medicare Advantage Organizations

- Aetna Health Inc. d/b/a Coventry Health Plan of Florida, Inc.
- AHF MCO of Florida, Inc. d/b/a Positive Healthcare
- Amerigroup Florida, Inc.
- AvMed, Inc. d/b/a AvMed Health Plans
- Bchealthy Florida, Inc. d/b/a Florida Blue
- Better Health, Inc.
- BlueMedicare Preferred HMO
- Capital Health Plan, Inc.
- CarePlus Health Plans, Inc.
- Cigna Healthcare of Florida, Inc.
- Eden Health Plans, Inc.
- Florida Health Care Plans
- Florida Healthcare Plus
- Florida Health Solution HMO Company
- Florida MHS, Inc. d/b/a Magellan Complete Care
- Florida True Health, Inc.
- Freedom Health, Inc.
- Health First Health Plans, Inc.
- Health Options, Inc. d/b/a Florida Blue HMO
- HealthSpring of Florida, Inc. d/b/a Leon Medical Centers Health Plans
- HealthSun Health Plans, Inc.
- Healthy Palm Beaches, Inc.
- Humana Health Insurance Company of Florida, Inc.
- Humana Insurance Company
- Humana Medical Plan, Inc.
- Medica HealthCare Plans, Inc.
- Molina Healthcare of Florida
- Neighborhood Health Partnership, Inc.
- Optimum HealthCare, Inc.
- Preferred Care Partners, Inc.
- Preferred Medical Plan, Inc.
- Simply Healthcare Plans, Inc. d/b/a Clear Health Alliance
- Sunshine State Health Plan, Inc.
- The Public Health Trust of Dade County d/b/a JMH Health Plan
- Ultimate Health Plans, Inc.
- UnitedHealthcare of Florida, Inc.

- WellCare of Florida, Inc.

IN THE COUNTY COURT OF THE
11th JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 2015-017104-CA-01

MSPA RECOVERY, LLC,
a Florida profit corporation,

Plaintiff,

v.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant,
_____/

AGREED ORDER

THIS CAUSE came before the Court July 10, 2017 for telephonic hearing[1] on the Defendant's Motion to Dismiss the Third Amended Complaint and the Plaintiff's Motion to Compel Better Interrogatory Answers. Based on the agreement of the parties and to further judicial efficiency, the Court orders and adjudges:

1. Because Plaintiff has expressed an intent to file a motion for leave to file an Amended Complaint, Defendant agrees that its motion to dismiss the pending complaint is moot. **Plaintiff has until July 24, 2017 to file its motion for leave to file its Fourth Amended Complaint**.

2. Plaintiff's Motion to Compel Better Answers to Interrogatories is denied without prejudice to renew at an appropriate time given the Court's stay of discovery in its Class Action Scheduling Order dated March 15, 2016.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 07/10/17.

BARBARA ARECES
CIRCUIT COURT JUDGE

[1] Parties agreed to cancel hearing but appeared telephonically at the request of the Court.

No Further Judicial Action Required on THIS MOTION
CLERK TO RECLOSE CASE IF POST JUDGMENT

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed original order sent electronically to the Clerk of Courts for filing in the Court file.
Copies furnished to:
serve@msprecovery.com; breid@carltonfields.com; mallen@carltonfields.com

IN THE CIRCUIT COURT IN OF THE 11th JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 15-17104-CA-01

MSPA CLAIMS 1, LLC,

Plaintiff,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant.
_____/

AGREED ORDER ON PLAINTIFF'S UNOPPOSED MOTION FOR LEAVE TO FILE FOURTH AMENDED COMPLAINT

This cause came before the Court upon Plaintiff's Unopposed Motion for Leave to File its Fourth Amended Complaint. The Court, upon consideration of the Motion and being otherwise advised in its premises, it is:

ORDERED and ADJUDGED as follows:

1. Plaintiff's Motion to file its Fourth Amended Complaint is GRANTED.
2. Plaintiff has ten (10) days from the date of this order to file its Fourth Amended Complaint.
3. Defendant has thirty (30) days thereafter to file its response.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 08/04/17.

BARBARA ARECES
CIRCUIT COURT JUDGE

Copies furnished to:
All Counsel of Record

No Further Judicial Action Required on THIS MOTION
CLERK TO RECLOSE CASE IF POST JUDGMENT

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed original order sent electronically to the Clerk of Courts for filing in the Court file.

IN THE CIRCUIT COURT OF THE 11th JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

CASE NO. 2015-17104-CA-23

MSPA CLAIMS I, LLC,

Plaintiff,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant.
_____/

AGREED ORDER ON PLAINTIFFS' CORRECTED AMENDED MOTION FOR LEAVE TO AMEND COMPLAINT[1]

THIS CAUSE came before the Court on Plaintiff's Corrected Amended Motion for Leave to Amend Complaint ("Corrected Amended Motion"), filed March 16, 2018. The parties have stipulated to the filing of the Fourth Amended Complaint attached to the Corrected Amended Motion. Based on the agreement of the parties, it is

ORDERED AND ADJUDGED as follows:

1. Plaintiff's Corrected Amended Motion for Leave to Amend Complaint is granted.
2. Plaintiff has ten (10) days from the date this Order to file its Fourth Amended Complaint.
3. Defendant shall respond to the Fourth Amended Complaint within thirty (30) days thereafter.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 06/27/18.

BARBARA ARECES
CIRCUIT COURT JUDGE

[1] On August 4, 2017, this Court entered an Agreed Order on Plaintiff's Unopposed Motion for Leave to File Fourth Amended Complaint. Due to an electronic glitch in the delivery system, the order was never received by the Clerk's Office. This order supersedes the August 4, 2017 order. The Clerk has been provided with a copy of the August 4, 2017 order to correct the record.

No Further Judicial Action Required on THIS MOTION
CLERK TO RECLOSE CASE IF POST JUDGMENT

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed original order sent electronically to the Clerk of Courts for filing in the Court file.

Copies furnished to:
serve@msprecovery.com; breid@carltonfields.com; mallen@carltonfields.com

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

MSPA CLAIMS 1, LLC, a Florida Limited Liability Company, MSP RECOVERY CLAIMS, SERIES LLC, a Delaware entity, and SERIES 16-05-456, a series of MSP RECOVERY CLAIMS, SERIES LLC,	
Plaintiffs,	Case No.:
v.	
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY	
Defendant.	

DECLARATION OF KRISTY STAPLETON

I, Kristy Stapleton, under penalty of perjury, declare and state as follows:

1. I am over the age of 21 and am competent to make this Declaration.

2. I am employed by State Farm Mutual Automobile Insurance Company ("State Farm Mutual") as an Assistant Vice President-Accounting at State Farm Mutual's corporate headquarters in Bloomington, Illinois. I have been employed by State Farm Mutual for over 35 years in various accounting functions and I oversee the department that prepares and files the Annual Statements and related filings for State Farm Mutual and its property and casualty affiliates. I have personal knowledge of the matters stated herein and, if called as a witness, could competently testify thereto.

3. State Farm Mutual is a mutual insurance company organized under the laws of Illinois with its home office in Bloomington, Illinois. State Farm Mutual is licensed to conduct business and does conduct business in all 50 states and the District of Columbia.

4. State Farm Mutual's books and records are maintained in its home office, its directors are elected primarily at its home office, and its Board of Directors meetings are held primarily at its home office.

5. State Farm Mutual's principal officers are located at its home office and its federal income tax returns and state premium tax returns are filed from its home office.

6. State Farm Mutual's functional departments are headquartered at its home office, including its Property and Casualty ("P&C") Actuarial Department, which drafts its policy forms, its P&C Underwriting Department, which creates its underwriting standards, its P&C Claims Department, its Human Resources Department, its Systems Department, and its Administrative Services Department, among others.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Kristy Stapleton

Kristy Stapleton

JS 44 (Rev. 06/17) FLSD Revised 06/01/2017

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)* **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS MSPA CLAIMS 1, LLC; MSP RECOVERY CLAIMS, SERIES LLC; SERIES 16-05-456

DEFENDANTS STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

(b) County of Residence of First Listed Plaintiff Miami-Dade County, Florida
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant McLean County, Illinois
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

RIVERO MESTRE LLP, 2525 Ponce de León Blvd., Suite 1000
Miami, Florida 33134, Telephone: (305) 445-2500

Attorneys *(If Known)*

CARLTON FIELDS JORDEN BURT, P.A., 100 S.E. Second Street, Suite 4200, Miami, Florida 33131, Telephone: (305) 530-0050

(d) Check County Where Action Arose: ☑ MIAMI- DADE ☐ MONROE ☐ BROWARD ☐ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE ☐ HIGHLANDS

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☑ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff) and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☑ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☑ 4	☐ 4
Citizen of Another State	☐ 2	☑ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☑ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions

CONTRACT
- ☒ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Med. Malpractice

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence

Other:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee – Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent – Abbreviated New Drug Application
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729 (a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☒ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☐ 1 Original Proceeding ☑ 2 Removed from State Court ☐ 3 Re-filed **(See VI below)** ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district *(specify)* ☐ 6 Multidistrict Litigation Transfer ☐ 7 Appeal to District Judge from Magistrate Judgment ☐ 8 Multidistrict Litigation – Direct File ☐ 9 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S)

(See instructions): a) Re-filed Case ☐YES ☐ NO b) Related Cases ☐YES ☐ NO

JUDGE: **DOCKET NUMBER:**

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause ***(Do not cite jurisdictional statutes unless diversity)***:
Private cause of action under § 1395y(b)(3)(A) of the Medicare Secondary Payer Act.

LENGTH OF TRIAL via 7 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

☑ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23

DEMAND $ 5,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☑ Yes ☐ No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE August 3, 2018

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT IFP JUDGE MAG JUDGE

JS 44 (Rev. 06/17) FLSD Revised 06/01/2017

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked. Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

VI. Related/Refiled Cases. This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

VII. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity**. Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VIII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.