IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

VALUED PHARMACY SERVICES OF THE MIDWEST, LLC D/B/A NFP RX SOLUTIONS,	)	
Plaintiff,	)	
v.	)	Case No.
AVERA HEALTH PLANS, INC.,	)	Jury Trial Demanded
Defendant.	)	

COMPLAINT

COMES NOW Plaintiff Valued Pharmacy Services of the Midwest, LLC d//b/a NFP Rx Solutions ("**VPS**"), and for its Complaint against Defendant Avera Health Plans, Inc. ("**Avera**"), states as follows:

PRELIMINARY STATEMENT

1. The pharmacy benefits world is complex, but Avera's scheme in this case was simple: Avera tricked VPS into providing Avera the information, services, and work product Avera needed to save millions of dollars per year in connection with its specialty pharmacy benefit program, then pretended it had decided not to use VPS's information, services, and work product after all, to avoid paying VPS.

2. In reality, Avera brazenly stole and is using the information, services, and work product provided by VPS in connection with the design, validation, and implementation of a customized specialty pharmacy benefit program for Avera.

3. Avera reaped the benefits of VPS's proprietary industry knowledge, special industry relationships, and hundreds—if not thousands—of hours of customized work undertaken

on an expedited basis to accommodate Avera's requested timeline for implementing the new plan.

4. After months of working together, and after Avera had received all of the components of the specialty pharmacy benefit program VPS had designed and created for it, Avera abruptly told VPS that Avera would not be moving forward with implementing the program. Avera further claimed it had known VPS's plan concept all along, and VPS had provided little of value, claiming that most of the value was in changing the plan design to utilize a twenty percent coinsurance rate, which Avera contended was not a proprietary coinsurance amount.

5. VPS was shocked by Avera's decision, as well as its statements. VPS had worked long hours over eight months to develop, validate, and operationalize the program for a January 1, 2021 start date.

6. Avera's sudden about-face not only was incongruent with its business dealings with VPS up to that point, it also made little financial sense for Avera. VPS's program would have saved Avera millions of dollars per year. And, thanks to VPS, virtually all the work had been done to complete its implementation.

7. Unbeknownst to VPS, Avera's course of conduct was intended to extract and retain the value of all of the work VPS had provided, while attempting to avoid paying for such work. Approximately one month after being told that Avera would not be moving forward with the program, VPS learned that Avera had lied. Specifically, VPS was contacted by one of Avera's members who had received a letter from Avera, which was based upon the letter VPS provided to Avera as part of its efforts to design and implement the new program, and from which Avera had failed to remove VPS's telephone number. VPS has since heard from two additional Avera

members who received similar letters. The recipients of these letters worked for different employers. From these letters, it is clear that Avera has simply taken VPS's work product, implemented all elements of the program that VPS spent countless hours developing, and is utilizing and reaping the benefits of VPS's work.

8. Avera fraudulently and unjustly induced VPS to provide extensive services, proprietary information, and work product to Avera in connection with the design, validation, and implementation of a specialty pharmacy benefit program, and Avera fraudulently and unjustly accepted and retained the benefits of that work without compensation to VPS, while misleading VPS into believing that Avera would pay Avera for its work and maintain an ongoing relationship. Then, when Avera abruptly reneged on finalizing a master services agreement—after months of work by VPS, at a time when VPS had completed all work necessary to implement the new program design—Avera falsely claimed that Avera would not be moving forward with implementation of VPS's program and that the work provided by VPS was worthless.

9. VPS is entitled to compensatory and punitive damages.

THE PARTIES

10. Plaintiff VPS is a limited liability company organized under the laws of the State of Missouri. Its principal office is located at 691 Trade Center Blvd., Chesterfield, Missouri, and its members are citizens of New York and Delaware.

11. Defendant Avera is a corporation organized and existing under the laws of the State of South Dakota, with its principal office located at 5300 S. Broadband Lane, Sioux Falls, South Dakota.

VENUE AND JURISDICTION

12. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, because this action is between citizens of different states, and the amount in controversy exceeds the sum of $75,000, exclusive of interest and costs.

13. This Court has personal jurisdiction over Avera, because Avera reached out to VPS in the State of Missouri to induce VPS to design, validate, and implement a program, and Avera negotiated and transacted business with VPS within the State of Missouri and within this district.

14. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(2), 1391(c)(2), and 1391(d).

GENERAL ALLEGATIONS

15. VPS is a pharmacy benefits management ("**PBM**") consulting firm. It works with employers and other health plan providers to develop customized pharmacy benefit plans. These plans maximize pharmacy benefits for end users while also identifying cost-saving solutions for VPS's clients, employers or health plans who administer pharmacy benefits.

16. Avera is a health plan provider that serves more than 85,000 customers. Avera manages health benefits for individuals, families, and employee groups by providing medical care for these plan participants directly or through insurance, reimbursement, or otherwise.

Avera's Initiation of the Consulting Relationship with VPS

17. In or around February 2020, Avera reached out to VPS in Missouri through Avera's agent, Axia Strategies ("**Axia**"), to inquire about the solutions VPS might be able to provide Avera.

18. Avera was trying to cut costs for its "specialty" pharmacy benefits plan.

19. Unlike retail pharmacies, specialty pharmacies focus on complex and chronic conditions requiring specialty prescriptions. These prescriptions generally require special handling and administration, and they can be prohibitively expensive.

20. Manufacturers of these specialty medications often provide certain patients with incentives or rebates via "copay cards." Employers and health plan providers can also tap into discounts and savings, but they must implement a unique pharmacy benefit design and savings program like the one VPS designed for Avera. If the employers and health plan providers do not implement the unique benefit design and savings program, they will not realize the discounts or savings. All of these incentives have complex conditions and certain limitations, which vary by medication.

21. Through years of research and through its industry relationships, VPS has developed an exhaustive and proprietary compilation and understanding of these copay card programs, discounts, and other incentives, their conditions, and limitations, and VPS has developed a proprietary methodology for understanding and evaluating the specific incentives available to offset the costs of specialty medications.

22. Prior to reaching out to VPS about a redesign of its specialty pharmacy program, among other things, Avera was helping patients sign up for copay cards to reduce patient copays, but Avera itself was not realizing any savings. Avera had also tried to work with at least one other PBM consulting firm, PillarRx Consulting, LLC, which is also located in St. Louis, Missouri. PillarRx was unable to provide a solution meeting Avera's specific requirements.

23. In or around February 2020, Avera stated that it desired to engage VPS to assist Avera with developing a strategy to lower its specialty pharmacy benefits costs. However, Avera

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