

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CRISIS PREGNANCY SERVICES, INC,
d/b/a COMPASSCARE

Plaintiff,

v.

HANNAH KAMKE and JENNIFER L. PAGE,
JOHN DOE 1 and JANE DOE 2

Defendant.

Case No.: 1:23-cv-01057-LJV

HANNAH KAMKE

Counterclaim Plaintiff,

v.

CRISIS PREGNANCY SERVICES, INC,
d/b/a COMPASSCARE

Counterclaim Defendant.

**DEFENDANT HANNAH KAMKE’S ANSWER, AFFIRMATIVE DEFENSES, AND
COUNTERCLAIMS TO PLAINTIFF’S COMPLAINT**

Defendant Hannah Kamke (“Ms. Kamke”), by and through her undersigned counsel, hereby files her Answer, Affirmative Defenses, and Counterclaims to Plaintiff Crisis Pregnancy Services, Inc.’s (d/b/a CompassCare) (“Defendant”) Complaint using the same headings and paragraph numbers employed by Plaintiff.

PRELIMINARY STATEMENT

1. Ms. Kamke lacks knowledge or information as to the truth or falsity of the allegations set forth in Paragraph 1 and on that basis denies, generally and specifically, each and every allegation set forth therein.

2. Ms. Kamke respectfully refers this Court to the full text of the May 2, 2022 Politico article titled “*Read Justice Alito’s initial draft abortion opinion which would overturn Roe v. Wade,*” which can be accessed through the following hyperlink: <https://bit.ly/41h4IxA>, for its content and meaning. Ms. Kamke otherwise denies, generally and specifically, each and every allegation in Paragraph 2.

3. Ms. Kamke lacks knowledge or information as to the truth or falsity of the allegations set forth in Paragraph 3 and on that basis denies, generally and specifically, each and every allegation set forth therein.

4. Ms. Kamke denies that she is associated with Jane’s Revenge. Ms. Kamke otherwise lacks knowledge or information as to the truth or falsity of the allegations set forth in Paragraph 4 and on that basis denies, generally and specifically, each and every allegation set forth therein.

5. Ms. Kamke lacks knowledge or information as to the truth or falsity of the allegations set forth in Paragraph 5 and on that basis denies, generally and specifically, each and every allegation set forth therein.

6. Ms. Kamke lacks knowledge or information as to the truth or falsity of the allegations set forth in Paragraph 6 and on that basis denies, generally and specifically, each and every allegation set forth therein.

7. Ms. Kamke lacks knowledge or information as to the truth or falsity of the allegations set forth in Paragraph 7 and on that basis denies, generally and specifically, each and every allegation set forth therein.

8. Paragraph 8 contains legal conclusions that require no response. To the extent that such allegations are deemed to be allegations of fact, Ms. Kamke respectfully refers this Court to

the full text of the Freedom of Access to Clinic Entrances Act (the “FACE Act”), 18 U.S.C. § 248, and its legislative history for an accurate description of the contents thereof. Ms. Kamke otherwise denies, generally and specifically, each and every allegation contained in Paragraph 8.

9. Paragraph 9 contains legal conclusions that require no response. To the extent that such allegations are deemed to be allegations of fact, Ms. Kamke respectfully refers this Court to the full text of the FACE Act, 18 U.S.C. § 248, and its legislative history for an accurate description of the contents thereof. Ms. Kamke denies that the FACE Act applies to crisis pregnancy centers, such as Plaintiff, and otherwise denies, generally and specifically, each and every allegation in Paragraph 9.

10. Ms. Kamke lacks knowledge or information as to the truth or falsity of the allegations set forth in Paragraph 10 and on that basis denies, generally and specifically, each and every allegation set forth therein.

11. Ms. Kamke lacks knowledge or information as to the truth or falsity of the allegations set forth in Paragraph 11 and on that basis denies, generally and specifically, each and every allegation set forth therein.

12. Paragraph 12 contains legal conclusions that require no response. To the extent that such allegations are deemed to be allegations of fact, Ms. Kamke denies, generally and specifically, each and every allegation set forth in Paragraph 12.

NATURE OF THE ACTION

13. Paragraph 13 contains legal conclusions that require no response. To the extent that such allegations are deemed to be allegations of fact, Ms. Kamke admits that Plaintiff purports to assert claims under the FACE Act, 18 U.S.C. § 248, but denies, generally and specifically, that such claims can be brought pursuant to the FACE Act.

14. Paragraph 14 contains legal conclusions to which no response is required. To the extent that such allegations are deemed to be allegations of fact, Ms. Kamke denies that she violated the FACE Act and denies, generally and specifically, each and every allegation contained in Paragraph 14 to the extent that they address Ms. Kamke's purported conduct. Ms. Kamke lacks knowledge or information as to the truth or falsity of the allegations pertaining to Jennifer L. Page ("Page") and on that basis denies, generally and specifically, the allegations in Paragraph 14.

15. Ms. Kamke admits that Plaintiff purports to seek injunctive relief and monetary damages in its suit and denies, generally and specifically, that Plaintiff is entitled to any relief whatsoever.

JURISDICTION AND VENUE

16. Paragraph 16 contains legal conclusions that require no response. To the extent such allegations are deemed to be allegations of fact, Ms. Kamke admits that Plaintiff purport to assert claims under the FACE Act, 18 U.S.C. § 248, which is a federal statute, but denies, generally and specifically, that such claims can be brought pursuant to the FACE Act.

17. Paragraph 17 contains legal conclusions that require no response. To the extent such allegations are deemed to be allegations of fact, Ms. Kamke admits that she resides in the judicial district and that venue is proper in the Western District of New York. Ms. Kamke lacks knowledge or information as to the truth or falsity of the allegations set forth in Paragraph 17 pertaining to Page and on that basis denies, generally and specifically, the allegations in Paragraph 17.

LEGAL STANDARD

18. Ms. Kamke denies that she is a pro-abortion activist and that she intended to cause CompassCare's employees and patients to feel intimidated, interfered with, or threatened. Ms. Kamke denies that she has been criminally charged with vandalism, theft, and damage to

CompassCare reproductive health facility in Amherst, NY. Ms. Kamke admits that she pled guilty to this single charge of disorderly conduct (Penal Law § 240.20(7)) in Amherst Town Court for spray painting the word “liars” on a sign outside of CompassCare’s facility at 1230 Eggert Road, Buffalo, New York (the “Amherst Facility”). As a condition of her plea, Ms. Kamke paid full restitution amounting to \$2,580 to CompassCare for all damage incurred to the sign at the Buffalo facility. Ms. Kamke also consented to an oral admonition by Amherst Town Court to stay away from CompassCare’s Amherst facility. Ms. Kamke lacks knowledge or information as to the truth or falsity of the allegations set forth in Paragraph 18 pertaining to Page and on that basis denies, generally and specifically, the allegations in Paragraph 18.

19. Paragraph 19 contains legal conclusions that require no response. To the extent these allegations are deemed to be allegations of fact to which an answer is required, Ms. Kamke respectfully refers this Court to the full text of the FACE Act, 18 U.S.C. § 248, and its legislative history for an accurate description of the contents thereof. Ms. Kamke otherwise denies, generally and specifically, each and every allegation in Paragraph 19.

20. Paragraph 20 contains legal conclusions that require no response. To the extent these allegations are deemed to be allegations of fact to which an answer is required, Ms. Kamke respectfully refers this Court to the full text of the FACE Act, 18 U.S.C. § 248 and its legislative history for an accurate description of the contents thereof. Ms. Kamke otherwise denies, generally and specifically, each and every allegation contained in Paragraph 20.

21. Paragraph 21 contains legal conclusions that require no response. To the extent these allegations are deemed to be allegations of fact to which an answer is required, Ms. Kamke respectfully refers this Court to the full text of the FACE Act, 18 U.S.C. § 248, and its legislative

history for an accurate description of the contents thereof. Ms. Kamke otherwise denies, generally and specifically, each and every allegation contained in Paragraph 21.

22. Paragraph 22 contains legal conclusions that require no response. To the extent these allegations are deemed to be allegations of fact to which an answer is required, Ms. Kamke respectfully refers this Court to the full text of the FACE Act, 18 U.S.C. § 248 and its legislative history for an accurate description of the contents thereof. Ms. Kamke otherwise denies, generally and specifically, each and every allegation contained in Paragraph 22.

23. Paragraph 23 contains legal conclusions that require no response. To the extent these allegations are deemed to be allegations of fact to which an answer is required, Ms. Kamke respectfully refers this Court to the full text of the FACE Act, 18 U.S.C. § 248 and its legislative history for an accurate description of the contents thereof. Ms. Kamke otherwise denies, generally and specifically, each and every allegation contained in Paragraph 23.

24. Paragraph 24 contains legal conclusions that require no response. To the extent these allegations are deemed to be allegations of fact to which an answer is required, Ms. Kamke respectfully refers this Court to the full text of the FACE Act, 18 U.S.C. § 248 and its legislative history for an accurate description of the contents thereof. Ms. Kamke otherwise denies, generally and specifically, each and every allegation contained in Paragraph 24.

FACTUAL ALLEGATIONS

25. Ms. Kamke lacks knowledge or information as to the truth or falsity of the allegations set forth in Paragraph 25 pertaining to Plaintiff's status as a non-profit corporation and the location of its principal place of business and on that basis denies, generally and specifically, each and every allegation set forth therein. Ms. Kamke admits that Plaintiff operates a facility in Amherst, New York. Ms. Kamke denies that Plaintiff operates a reproductive health facility.

26. Ms. Kamke denies that Plaintiff provides reproductive health care services. Ms. Kamke lacks knowledge or information as to the truth or falsity of the remaining allegations set forth in Paragraph 26 and on that basis denies, generally and specifically, each and every allegation set forth therein.

27. Ms. Kamke lacks knowledge or information as to the truth or falsity of the allegations set forth in Paragraph 27 and on that basis denies, generally and specifically, the allegations in Paragraph 27.

28. Ms. Kamke admits that she is a resident of Buffalo, NY.

29. Ms. Kamke lacks knowledge or information as to the truth or falsity of the allegations set forth in Paragraph 29 and on that basis denies, generally and specifically, the allegations in Paragraph 29.

30. Ms. Kamke lacks knowledge or information as to the truth or falsity of the allegations set forth in Paragraph 30 and on that basis denies, generally and specifically, the allegations in Paragraph 30.

31. Ms. Kamke lacks knowledge or information as to the truth or falsity of the allegations set forth in Paragraph 31 and on that basis denies, generally and specifically, the allegations in Paragraph 31.

32. Ms. Kamke lacks knowledge or information as to the truth or falsity of the allegations set forth in Paragraph 32 and on that basis denies, generally and specifically, the allegations in Paragraph 32.

33. Ms. Kamke lacks knowledge or information as to the truth or falsity of the allegations set forth in Paragraph 33 and on that basis denies, generally and specifically, the allegations in Paragraph 33.

34. Ms. Kamke lacks knowledge or information as to the truth or falsity of the allegations set forth in Paragraph 34 and on that basis denies, generally and specifically, the allegations in Paragraph 34.

35. Ms. Kamke admits that on March 16, 2023, she spray-painted the word “LIARS” on a sign outside of CompassCare’s Amherst Facility. Ms. Kamke admits that the damage to the sign amounted to \$2,580, and as Ms. Kamke paid full restitution amounting to \$2,580 to CompassCare for all damage incurred to the sign at the Amherst Facility. Ms. Kamke denies, generally and specifically, each and every remaining allegation in Paragraph 35.

36. Ms. Kamke admits that she pled guilty to this single charge of disorderly conduct (Penal Law § 240.20(7)) in Amherst Town Court in connection with the incident. As a condition of her plea, Ms. Kamke paid full restitution amounting to \$2,580 to CompassCare for all damage incurred to the sign at the Amherst Facility. Ms. Kamke also consented to an oral admonition by Amherst Town Court to stay away from CompassCare’s Amherst Facility. Ms. Kamke denies, generally and specifically, each and every remaining allegation in Paragraph 36.

FIRST CAUSE OF ACTION

Threatening and Intimidating Persons in Violation of 18 U.S.C. 248(a)(1)

37. Ms. Kamke incorporates and repeats as if full set forth herein her admissions, denials, averrals, and other answers to the allegations set forth in the above Paragraphs.

38. Paragraph 38 contains legal conclusions that require no response. To the extent the allegations in Paragraph 38 are deemed to be factual allegations, Ms. Kamke respectfully refers this Court to the full text of the FACE Act, 18 U.S.C. § 248 for an accurate description of the contents thereof. Ms. Kamke otherwise denies, generally and specifically, each and every allegation contained in Paragraph 38.

39. Paragraph 39 contains legal conclusions that require no response. To the extent the allegations in Paragraph 39 are deemed to be factual allegations, Ms. Kamke respectfully refers this Court to the full text of the FACE Act, 18 U.S.C. § 248 for an accurate description of the contents thereof. Ms. Kamke otherwise denies, generally and specifically, each and every allegation contained in Paragraph 39.

40. Ms. Kamke denies, generally and specifically, each and every allegation in Paragraph 40.

41. Ms. Kamke denies, generally and specifically, each and every allegation contained in Paragraph 41 to the extent that they address Ms. Kamke's purported conduct. Ms. Kamke lacks knowledge or information as to the truth or falsity of the allegations set forth in Paragraph 41 pertaining to Defendants Jennifer L. Page, John Doe 1, and Jane Doe 2 and on that basis denies, generally and specifically, the allegations in Paragraph 41.

42. Ms. Kamke denies, generally and specifically, each and every allegation contained in Paragraph 42 to the extent that they address Ms. Kamke's purported conduct. Ms. Kamke lacks knowledge or information as to the truth or falsity of the allegations set forth in Paragraph 42 pertaining to Defendants Jennifer L. Page, John Doe 1, and Jane Doe 2 and on that basis denies, generally and specifically, the allegations in Paragraph 42.

43. Ms. Kamke admits that Plaintiff purports to seek compensatory and punitive damages, as well as costs of suit and reasonable fees for attorneys and expert witnesses in this suit. Ms. Kamke denies that Plaintiff is entitled to any relief, including the relief identified in Paragraph 43. Ms. Kamke otherwise denies, generally and specifically, each and every allegation contained in Paragraph 43

SECOND CAUSE OF ACTION
Damaging the Property of a Reproduction Services Facility in
Violation of 18 U.S.C. 248(a)(3)

44. Ms. Kamke incorporates and repeats as if full set forth herein her admissions, denials, averrals, and other answers to the allegations set forth in the above Paragraphs.

45. Paragraph 45 contains legal conclusions that require no response. To the extent any response is required, Ms. Kamke respectfully refers this Court to the full text of the FACE Act, 18 U.S.C. § 248 for an accurate description of the contents thereof. Ms. Kamke otherwise denies, generally and specifically, each and every allegation contained in Paragraph 45.

46. Paragraph 46 contains legal conclusions that require no response. To the extent any response is required, Ms. Kamke respectfully refers this Court to the full text of the FACE Act, 18 U.S.C. § 248 for an accurate description of the contents thereof. Ms. Kamke otherwise denies, generally and specifically, each and every allegation contained in Paragraph 46.

47. Ms. Kamke denies, generally and specifically, each and every allegation contained in Paragraph 47.

48. Ms. Kamke denies, generally and specifically, each and every allegation contained in Paragraph 48 to the extent that they address Ms. Kamke's purported conduct. Ms. Kamke lacks knowledge or information as to the truth or falsity of the allegations set forth in Paragraph 48 pertaining to Defendants Jennifer L. Page, John Doe 1, and Jane Doe 2 and on that basis denies, generally and specifically, the allegations in Paragraph 48.

49. Ms. Kamke denies, generally and specifically, each and every allegation contained in Paragraph 49 to the extent that they address Ms. Kamke's purported conduct. Ms. Kamke lacks knowledge or information as to the truth or falsity of the allegations set forth in Paragraph 49

pertaining to Defendants Jennifer L. Page, John Doe 1, and Jane Doe 2 and on that basis denies, generally and specifically, the allegations in Paragraph 49.

50. Ms. Kamke admits that Plaintiff seeks compensatory and punitive damages, as well as costs of suit and reasonable fees for attorneys and expert witnesses in this suit. Ms. Kamke denies that Plaintiff is entitled to any relief, including the relief identified in Paragraph 50. Ms. Kamke otherwise denies, generally and specifically, each and every allegation contained in Paragraph 50.

THIRD CAUSE OF ACTION
Request for Permanent Injunctive Relief

51. Ms. Kamke incorporates and repeats as if full set forth herein her admissions, denials, averrals, and other answers to the allegations set forth in the above Paragraphs.

52. Paragraph 52 contains legal conclusions that require no response. To the extent any response is required, Ms. Kamke respectfully refers this Court to the full text of the FACE Act, 18 U.S.C. § 248 for an accurate description of the contents thereof. Ms. Kamke otherwise denies each and every allegation contained in Paragraph 52.

53. Ms. Kamke denies, generally and specifically, each and every allegation contained in Paragraph 53 to the extent that they address Ms. Kamke's purported conduct. Ms. Kamke further specifically denies that she has any history of politically motivated criminal behavior towards organizations like Plaintiff. Ms. Kamke lacks knowledge or information as to the truth or falsity of the allegations set forth in Paragraph 53 pertaining to Defendants Jennifer L. Page, John Doe 1, and Jane Doe 2 and on that basis denies, generally and specifically, the allegations in Paragraph 53.

54. Ms. Kamke denies, generally and specifically, each and every allegation contained in Paragraph 54 to the extent that they address Ms. Kamke's purported conduct. Ms. Kamke further

specifically denies that she has a history of repeatedly violating the FACE Act. Ms. Kamke lacks knowledge or information as to the truth or falsity of the allegations set forth in Paragraph 54 pertaining to Defendants Jennifer L. Page, John Doe 1, and Jane Doe 2 and on that basis denies, generally and specifically, the allegations in Paragraph 54.

55. Ms. Kamke denies, generally and specifically, each and every allegation contained in Paragraph 55 to the extent that they address Ms. Kamke's purported conduct. Ms. Kamke further specifically denies she is likely to intimidate and interfere with the provision of reproductive services in New York. Ms. Kamke further denies that the CompassCare's Amherst Facility provides reproductive health services. Ms. Kamke lacks knowledge or information as to the truth or falsity of the allegations set forth in Paragraph 55 pertaining to Defendants Jennifer L. Page, John Doe 1, and Jane Doe 2 and on that basis denies, generally and specifically, the allegations in Paragraph 55.

56. Ms. Kamke admits that Plaintiff seeks compensatory and punitive damages, as well as costs of suit and reasonable fees for attorneys and expert witnesses in this suit. Ms. Kamke denies that Plaintiff is entitled to any relief, including the relief identified in Paragraph 56. Ms. Kamke otherwise denies, generally and specifically, each and every allegation contained in Paragraph 56.

RESPONSE TO PRAYER FOR RELIEF

With respect to the WHEREFORE clauses in the Complaint, Ms. Kamke denies that Plaintiff is entitled to any relief whatsoever and as a result, denies Plaintiff's Prayer for Relief in its entirety.

GENERAL DENIAL

Each numbered paragraph in this Answer responds to the identically numbered paragraph in the Complaint. Ms. Kamke denies all allegations, declarations, claims, or assertions in the

Complaint that are not specifically admitted in this Answer. To the extent the headings contained in the Complaint constitute allegations such allegations are denied.

AFFIRMATIVE DEFENSES

Further responding to the Complaint, Ms. Kamke asserts the following defenses. Ms. Kamke does not admit to having the burden of proof and/or the burden of persuasion with respect to any of these defenses. By designating the following as defenses, Ms. Kamke does not in any way waive or limit any defenses that are or may be raised by their denials, allegations, and averments set forth herein. These defenses are pleaded in the alternative, are raised to preserve Ms. Kamke's right to assert such defenses, and are raised without prejudice to Ms. Kamke's ability to raise other and further defenses. Ms. Kamke reserves the right to amend, supplement, and/or otherwise modify this Answer, including without limitation the right to assert additional defenses that become known to Ms. Kamke through discovery or otherwise:

FIRST AFFIRMATIVE DEFENSE

Failure to State a Claim

Plaintiff's claims for relief against Ms. Kamke are barred because the Complaint fails to state a claim for which the relief sought may be granted. Plaintiff's claims for relief against Ms. Kamke are barred because Plaintiff does not provide "reproductive health services" and, therefore, is not subject to the FACE Act, 18 U.S.C. § 248(e)(5). Plaintiff's claims for relief against Ms. Kamke are also barred because Ms. Kamke did not violate the FACE Act, 18 U.S.C. § 248. Ms. Kamke did not intimidate or interfere by force or threat of force with Plaintiff's ability to provide reproductive healthcare services. Further, Ms. Kamke did not spray-paint graffiti on CompassCare's entrance sign because Plaintiff provided reproductive healthcare services. Ms. Kamke spray-painted graffiti over the entrance sign as a direct result of believing she was misled

by the services she received from Plaintiff. Finally, Plaintiff's third cause of action seeking a permanent injunction is not a valid claim for relief.

SECOND AFFIRMATIVE DEFENSE
No Joint and Several Liability

Plaintiff's claims for relief against Ms. Kamke are barred because Ms. Kamke is not jointly or severally responsible for the conduct alleged by Plaintiff against Jennifer L. Page, John Doe 1, or Jane Doe 2.

THIRD AFFIRMATIVE DEFENSE
Plaintiff Has Not Sustained Any Damages

Plaintiff's claims for relief against Ms. Kamke are barred because Plaintiff has not any cognizable injury or damages. Kamke paid full restitution of \$2,580 to CompassCare for any and all property damage caused by her actions. Ms. Kamke also consented to an oral admonition by Amherst Town Court to stay away from CompassCare's Amherst Facility.

FOURTH AFFIRMATIVE DEFENSE
Rule Against Double Recovery

Plaintiff's claims for relief against Ms. Kamke are barred because Plaintiff is precluded by the rule against double recovery. Ms. Kamke paid full restitution of \$2,580 to CompassCare for any and all property damage caused by her actions. Ms. Kamke also consented to an oral admonition by Amherst Town Court to stay away from CompassCare's Amherst Facility.

FIFTH AFFIRMATIVE DEFENSE
Doctrine of Unclean Hands

Recovery on each of Plaintiff's claims is barred by the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE
Reservation of Rights

Defendant reserves the right to assert any and all additional affirmative defenses that may hereafter be determine to be applicable to this case, including without limitation any revealed during the course of discovery.

Having fully answered Plaintiff's Complaint, Ms. Kamke pleads her counterclaims against Plaintiff/Counterclaim Defendant Crisis Pregnancy Services, Inc. d/b/a CompassCare Pregnancy Services:

COUNTERCLAIMS

THE PARTIES

A. Counterclaim Defendant Crisis Pregnancy Services, Inc.

1. Counterclaim Defendant Crisis Pregnancy Services, Inc. d/b/a CompassCare Pregnancy Services ("Counterclaim Defendant" or "CompassCare") is, as its business name demonstrates, an anti-abortion crisis pregnancy center ("CPC"). It is a faith-based enterprise that operates multiple offices in New York state: in Albany, Amherst/Buffalo, and Rochester. CompassCare does not provide abortions or referrals for abortions. CompassCare, however, intentionally advertises abortion information on its consumer-facing website, compasscare.info, to induce pregnant people seeking abortions to visit its facilities. CompassCare then strives to pressure and prevent them from getting the abortion services they seek.

2. CompassCare is not licensed to operate by the New York State Department of Health.

B. Counterclaim Plaintiff Hannah Kamke

3. Ms. Kamke is a resident of Buffalo, New York. She is not a pro-abortion activist.

4. In December 2021, Ms. Kamke believed she was pregnant. Through searching for abortion services in Buffalo on Google, she learned of CompassCare. Based on her Google search and the content of CompassCare's consumer-facing website, Ms. Kamke was deceived by CompassCare into believing that by going to CompassCare, she could obtain unbiased reproductive health services, including, if needed, abortion services from their facility in Amherst, New York. But instead of the unbiased reproductive health services Ms. Kamke had expected,

CompassCare employees subjected her to faith-based anti-abortion pressure under the guise of “reproductive health services” and provided inadequate health services that caused her severe distress.

JURISDICTION AND VENUE

5. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction). Jurisdiction over state-law claims is appropriate because the claims arise out of the same operative facts as the federal claims such that they form part of the same case and controversy, and fall within the scope of this Court’s supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

6. Venue is proper under 28 U.S.C. § 1391 because the Counterclaim Defendant is a resident of this district, and because a substantial part of the events or omissions giving rise to the claims occurred in this district.

FACTUAL ALLEGATIONS

A. Crisis Pregnancy Centers like CompassCare Willfully Confuse and Mislead Pregnant People About Their Services and Abortion

7. Counterclaim Defendant CompassCare’s Amherst Facility is one of approximately 120 anti-abortion CPCs in New York state.¹

8. CPCs like CompassCare do not offer abortion care. By nature and design, CPCs exist to block pregnant people who are considering or seeking an abortion from getting an abortion. CPCs are not health clinics and can thus operate unregulated by state health regulators.² This lack of regulation and oversight can have deleterious effects on the health of women.

¹ Kimiko de Freytas-Tamura, *In New York, Anti-Abortion Centers Outnumber Abortion Clinics*, N.Y. TIMES (June 25, 2022), <https://www.nytimes.com/2022/06/25/nyregion/crisis-pregnancy-centers-abortion-nyc.html>.

² Kimberly Kindy, *Partisan battle grows for state funding for antiabortion clinics*, WASH. POST (Sept. 14, 2023), <https://www.washingtonpost.com/politics/2023/09/14/gop-lawmakers-crisis-pregnancy-centers-state-funding/>.

9. An estimated 2,529 CPCs, which are often faith-based, currently exist around the country.³ Nationally, CPCs outnumber abortion clinics 3-to-1.⁴ Many of these CPCs are affiliated with national anti-abortion and/or Christian organizations.⁵ Even in states like New York, where, following the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), the right to choose still exists, CPCs outnumber abortion clinics. While there are 72 abortion clinics in New York state, there are 120 CPCs. CompassCare runs three such CPCs, including the one in Amherst, New York where Ms. Kamke tried unsuccessfully to obtain reproductive health services.⁶

10. CPCs get pregnant people in the door by using a number of underhanded tactics, including by misrepresenting the services they provide and obfuscating their purpose and whether they offer abortions.⁷ For example, CPCs specifically target pregnant people online by misleadingly advertising information about abortion on their websites despite not offering these services. Once a pregnant person is in the facility, CPCs effectuate their mission of preventing abortion through underhanded means. CPC volunteers and employees—who are frequently not healthcare professionals—lie about the effects of abortion, exert undue emotional pressure on vulnerable individuals, and, according to the American College of Obstetricians and Gynecologists, often delay pregnant people in finding abortion care until the window for legal

³ *Crisis Pregnancy Center Map*, <https://crisispregnancycentermap.com/>.

⁴ Natasha Lennard, *Reproductive Rights Activists Charged Under Law Intended to Protect Abortion Clinics*, THE INTERCEPT (Feb. 3, 2023), <https://theintercept.com/2023/02/03/abortion-clinics-face-act/>.

⁵ Joanne D. Rosen, *The Public Health Risks of Crisis Pregnancy Centers*, GUTTMACHER INST. (Sept. 2012), <https://www.guttmacher.org/journals/psrh/2012/09/public-health-risks-crisis-pregnancy-centers#psrh4420112-bib-0009>.

⁶ *Supra* at note 1.

⁷ Julianne McShane, *Crisis pregnancy center failed to spot an ectopic pregnancy, threatening patient's life, lawsuit alleges*, NBC NEWS (June 28, 2023), <https://www.nbcnews.com/health/womens-health/crisis-pregnancy-center-ectopic-pregnancy-lawsuit-rcna91660>; Freytas-Tamura, *supra* note 1; Rosen, *supra* note 5.

abortion expires.⁸ CPC staff discourage people from promptly seeking abortions by citing the high rate of miscarriages and “encouraging” them to wait and see if their pregnancy terminates on its own by which point the window for abortion can have expired.⁹ CPCs also peddle false, unproven, and inaccurate claims that abortion can cause sterility, cancer, or harm mental health.¹⁰ By trafficking in misinformation, CPCs like CompassCare bar pregnant people from being able to make informed decisions about their bodies, their health, and their families.

11. While CompassCare and other CPCs are not certified health clinics, they purport to offer health-related resources to vulnerable individuals like free pregnancy tests, ultrasounds, and testing for sexually transmitted infections.¹¹ These pregnancy tests are often just over-the-counter pregnancy tests.¹² And not every service CPCs provide is medically sound. Along with anti-abortion counseling, many CPCs—including CompassCare—tout that they can administer abortion reversals. These claims are not science-based and do not meet clinical efficacy or safety standards, according to the American College of Obstetrics and Gynecologists.¹³ Because CPCs advise on and provide such health-related care, they confuse pregnant people seeking their help about the nature of the services and the qualifications of CPC volunteers and employees. This is by design.

⁸ McShane, *supra* note 7; Freytas-Tamura, *supra* note 1; Rosen, *supra* note 5; *Crisis Pregnancy Center Information and Resources*, AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS, <https://www.acog.org/advocacy/abortion-is-essential/trending-issues/crisis-pregnancy-center-information#:~:text=Information%20on%20how%20to%20identify,become%20more%20and%20more%20commo nplace>.

⁹ *Crisis Pregnancy Centers Issue Brief*, AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS <https://www.acog.org/advocacy/abortion-is-essential/trending-issues/issue-brief-crisis-pregnancy-centers>.

¹⁰ Freytas-Tamura, *supra* note 1; Rosen, *supra* note 5.

¹¹ *Id.*

¹² Dawn Stacey, PhD, LMHC, *Beware of Crisis Pregnancy Centers*, VERYWELL HEALTH (Dec. 15, 2021) <https://www.verywellhealth.com/beware-of-crisis-pregnancy-centers-4022903> (“[C]risis pregnancy centers will also try to attract women by offering free pregnancy tests, but they use the same home pregnancy tests that you can buy in any drug store.”).

¹³ *Crisis Pregnancy Centers Issue Brief*, *supra* note 9.

12. CPCs often situate themselves in low-income and/or minority neighborhoods and target the most vulnerable pregnant people: poor people, under-educated people, young people, and people of color.¹⁴ CPCs offer services free of charge in an effort to target communities and people in need. CPCs are also frequently located near abortion clinics in a deliberate effort to confuse pregnant people about the services they offer. About this purposeful confusion, the leader of one pregnancy crisis center told the *New York Times* in 2022, “If we get people that are thinking we’re Planned Parenthood, we get them to come in, it has worked marvelously.”¹⁵

13. The *American Medical Association Journal of Ethics* has criticized CPCs for misrepresenting themselves as clinical centers that offer legitimate medical services and advice to women seeking care.¹⁶ In 2022, recognizing the scale of deceptive practices ongoing at CPCs, the American Medical Association, the leading professional association for American physicians, called for legislation that would require CPCs to “truthfully describe the services they offer or which they refer . . . in communications on site and in their advertising, and before any services are provided to an individual patient.”¹⁷

14. Associations of medical professionals are not alone in warning of the dangers CPCs pose to people in need of reproductive healthcare. In June 2022—seven months after Ms. Kamke sought services at CompassCare—New York Attorney General Letitia James sent a letter to

¹⁴ *Get The Facts, Crisis Pregnancy Centers*, WOMEN’S JUSTICE NOW, [https://nownyc.org/womens-justice-now/issues/get-the-facts-crisis-pregnancy-centers/#:~:text=CPCs%20target%20populations%20that%20are,time%2Dsensitive%20services%20for%20women](https://nownyc.org/womens-justice-now/issues/get-the-facts-crisis-pregnancy-centers/#:~:text=CPCs%20target%20populations%20that%20are,time%2Dsensitive%20services%20for%20women;); Anna North, *What “crisis pregnancy centers” really do*, VOX (Mar. 2, 2020), <https://www.vox.com/2020/3/2/21146011/crisis-pregnancy-center-resource-abortion-title-x>.

¹⁵ Freytas-Tamura, *supra* note 1.

¹⁶ Amy G. Bryant, MD, MSCR and Jonas J. Swartz, MD, MPH, *Why Crisis Pregnancy Centers Are Legal but Unethical*, AMA JOURNAL OF ETHICS (Mar. 2018), <https://journalofethics.ama-assn.org/article/why-crisis-pregnancy-centers-are-legal-unethical/2018-03>.

¹⁷ AMA, *Truth and Transparency in Pregnancy Counseling Centers H-420.954*, <https://policysearch.ama-assn.org/policyfinder/detail/crisis%20pregnancy%20center?uri=%2FAMADoc%2FHOD.xml-0-3697.xml>.

Google asking Google to differentiate between CPCs and abortion clinics in its search results.¹⁸ In a deliberate measure, CPCs often include “abortion” among their search engine optimization terms to catch people who are searching for more information about getting abortions for themselves.¹⁹ As Attorney General James noted, “CPCs exist solely to intercept and dissuade pregnant people from making fully informed decisions about their healthcare such as the choice to obtain an abortion. Including these organizations in a list for an individual seeking abortion services is dangerous and misleading.”

B. Counterclaim Defendant CompassCare Is an Anti-Abortion Enterprise That Falsely Presents Itself as an Unbiased Source of Reproductive Healthcare.

15. Founded in 1980 out of a Bible study group,²⁰ Counterclaim Defendant CompassCare is an anti-abortion crisis pregnancy center that operates offices in Albany, Buffalo/Amherst, and Rochester. It has stated in prior litigation that its “Christian faith and religious beliefs motivate and permeate its mission and all of its activities.”²¹ In fact, CompassCare views itself as an “outreach ministry of Jesus Christ through His church.” In church communications, CompassCare trumpets itself as a leader in a broader anti-abortion network.²² Ex. A. On a website for Evangelical donors, CompassCare boasts that “CompassCare is dedicated to erasing the need for abortion” and has an express goal of “cutting Buffalo abortions by 50% in

¹⁸ Letter from Darsana Srinivasan, Chief, Health Care Bureau, Office of the Attorney General, to Halimah DeLaine Prado, General Counsel, Google (June 28, 2022), https://ag.ny.gov/sites/default/files/2022.06.28_letter_to_google_re_cpcs.pdf.

¹⁹ Hannah Getahun, Isabella Zavarise, & Katie Nixdorf, *A woman who mistakenly visited an anti-abortion crisis pregnancy center said she was met with pushback for seeking an abortion: ‘I just was not ready, and words can’t make you ready for that’*, BUSINESS INSIDER (Dec. 5, 2022), <https://www.businessinsider.com/crisis-pregnancy-centers-target-women-seeking-abortions-with-misinformation-pushback-2022-11>.

²⁰ *About*, COMPASSCARE COMMUNITY (last visited Dec. 18, 2023), <https://www.compasscarecommunity.com/about/>.

²¹ *CompassCare, et al. v. Cuomo, et al.*, No. 1:19-cv-1409-TJM-DJS (N.D.N.Y.), Dkt. 1.

²² *Rev. James Harden*, NEW HOPE FREE METHODIST CHURCH (last accessed Dec. 18, 2023), <https://www.newhopefree.org/speakers/2016/5/12/rev-james-harden>.

5 years.”²³ Ex. B at 2. CompassCare purposefully does not, however, make these religious allegiances apparent on its consumer-facing website that Ms. Kamke visited.

16. CompassCare’s President and CEO is Jim Harden, an Evangelical reverend who believes that “Abortion is a God-sized problem only the Church has the faith to move.”²⁴

17. Dr. Theresa Rush is the Medical Director of CompassCare’s Amherst Facility.

18. In Google searches for “abortion Buffalo,” CompassCare’s consumer-facing website, compasscare.info, comes up twice among the top results on the first page. CompassCare has purposefully set up its search engine optimization in this way to bring pregnant people to the organization under a false pretense that CompassCare can offer them the abortion services they need. Rev. Harden made this design clear when he publicly stated that “CompassCare should be the first thing that comes up when a wom[a]n searches for abortion.”²⁵

19. The content of CompassCare’s primary consumer-facing website, compasscare.info, constitutes an advertisement, designed to attract consumers like Ms. Kamke to come to CompassCare for the so-called reproductive health services it falsely purports to offer. On its website, Compsscure, intentionally and in contradiction of a duty to do so, does not mention that it is a faith-based organization. Rather, the website falsely states that it provides “truly unbiased information” and that CompassCare was “objective and non-judgemental” [sic].²⁶ Ex. C at 2. On this website, CompassCare does *not* disclose that it is not licensed by the New York State Department of Health. Instead, it advertises its Amherst Facility as “[u]pstate NY’s leader in women’s reproductive health” and states that its “professional staff is dedicated to

²³ COMPASSCARE COMMUNITY, *supra* note 20.

²⁴ Mornings on the Dove, *Rev. Jim Harden, CEO of CompassCare*, FACEBOOK (Sept. 15, 2022), <https://www.facebook.com/theDoveOnline/videos/rev-jim-harden-ceo-of-compasscare/3036088820016144/>.

²⁵ Carla Rogner, *NYS to investigate crisis pregnancy centers*, CBS 6 NEWS WRGB ALBANY (July 8, 2022), <https://cbs6albany.com/pregnancy-centers-under-investigation>.

²⁶ *Planned Parenthood or CompassCare?*, COMPASSCARE (last accessed Dec. 18, 2023), <https://www.compasscare.info/who-we-are/compasscare-or-planned-parenthood/>.

providing medically accurate and confidential abortion information, pregnancy diagnosis, as well as STD testing and treatment.”²⁷ Ex. D at 2. Its website bills CompassCare as providing “Medical Services,” which include “Pre-Termination Evaluation,” “Diagnostic Pregnancy Services,” “STD Testing and Treatment,” and “Abortion Pill Reversal.” *Id.* It describes its hours of operation as “Patient Service Hours.” *Id.* It further advertises that it has “state-of-the-art” “medical facilities” that are “professional” to serve CompassCare’s “patients.”²⁸ Ex. E at 2. Many of the website’s pages feature citations to medical journals to augment the false appearance that it is a professional healthcare provider. *See e.g.*, Ex. C at 4, 5; Ex. F. at 3. The website also promotes that CompassCare “adheres to the principles of traditional medical ethics, which are found in the relationship between patient and doctor.”²⁹ Ex. C at 2. In short, CompassCare fraudulently holds itself out to consumers, like Ms. Kamke, as a legitimate reproductive healthcare services provider.

20. CompassCare’s website is purposefully and deceptively designed to advertise itself as a secular reproductive healthcare facility without any bias or agenda. But nothing could be further from the truth.

21. On its website, CompassCare incorrectly advises people like Ms. Kamke that their “first step” when pregnant and considering an abortion is to schedule a “free pre-termination evaluation” at CompassCare.³⁰ Ex. F at 2. CompassCare offers this deceptive “pre-termination evaluation” and describes it dishonestly as a necessary “first step” for any individual seeking an abortion. *Id.* The pre-termination evaluation is specifically designed to delay or prevent vulnerable people from getting an abortion. During these appointments, CompassCare employees

²⁷ *Buffalo Office*, COMPASSCARE (last accessed Dec. 18, 2023), <https://www.compasscare.info/who-we-are/buffalo-office/>.

²⁸ *State-of-the-Art Facilities*, COMPASSCARE (last accessed Dec. 18, 2023), <https://www.compasscare.info/who-we-are/state-of-the-art-facility/>.

²⁹ *Planned Parenthood or CompassCare?*, *supra* note 26.

³⁰ *Pre-Termination Evaluation*, COMPASSCARE (last accessed Dec. 18, 2023), <https://www.compasscare.info/medical-services/pre-termination-evaluation/>.

incorrectly and irresponsibly inform pregnant individuals that an abortion might not be necessary because 25% of pregnancies end before seven weeks due to a miscarriage. *Id.* The website states that, at this appointment, a pregnant individual will meet with a nurse who will review their health history, answer their medical questions, and perform a clinical pregnancy test. *Id.* If that test is positive, the nurse will perform an ultrasound to confirm the pregnancy and review “*all* of [the individual’s] pregnancy options, including abortion procedures, risks and side effects” (emphasis added). *Id.* at 3.

22. Once again, the webpage deliberately and deceptively hides from visitors, including Ms. Kamke, that CompassCare does *not* perform abortions. The website conceals CompassCare’s agenda and provides no indication that its employees aim to dissuade care-seekers from getting an abortion. CompassCare hides these facts to fraudulently induce women like Ms. Kamke who are seeking abortion care to come to CompassCare, instead of actual abortion clinics to give CompassCare the opportunity to pressure and dissuade them from getting an abortion in furtherance of its anti-abortion mission.

23. While CompassCare’s consumer-facing website takes pains to falsely portray itself as a neutral, unbiased source of reproductive healthcare, CompassCare’s non-consumer-facing websites paint a radically different picture. As alleged above, on a Christian community-facing website, compasscarecommunity.com, CompassCare is unabashed in its assertion that it seeks to “eras[e]” abortion and cut down abortion by 50% in New York, citing Christian doctrine that every person is “made in the image of God.” Ex. G at 2. In a 2016 blog post on the website, Rev. Harden boasted that “CompassCare is not just a Pregnancy Resource Center; it is a uniquely Christian one” and that “CompassCare does not simply provide medical care; it facilitates specifically Christian

medical care.”³¹ *Id.* On another website, where it sells “patient services” software called Optimize for other CPCs, CompassCare zealously describes itself as a “Christ-centered agency” that strives to “help everyone properly orient their lives toward God.”³² Ex. H at 2.

24. This bias pervades CompassCare’s day-to-day operations as well. In 2019, CompassCare sued Governor Andrew Cuomo challenging the constitutionality of a New York State Senate bill and demanding that CompassCare be permitted to discriminate on the basis of its religious belief in hiring employees.³³ In the lawsuit, CompassCare admitted that all of its staff are required to “know Jesus Christ as their Lord and Savior” and “share the Gospel” every time a person comes in to their office for help. *Id.* ¶¶ 76, 81. CompassCare also acknowledged outright it has a “religious mission.” *Id.* ¶ 82. The complaint avers point-blank that CompassCare’s employees can “never refer or advise any woman to have an abortion.” *Id.* ¶ 88. CompassCare also announced in its complaint that it “intend[s] to take adverse employment action against employees who choose to procure abortions” *Id.* ¶ 220.

25. Although CompassCare states this information easily and forthrightly in its lawsuit against Governor Cuomo and in its Christian community-facing online presences, in its consumer-facing website, CompassCare means to and does deceive women in need of reproductive services. The website conceals its faith-based mission, that its employees must be Christian, that it does not refer for abortion, or that, upon coming to CompassCare, a care-seeker will be subject to CompassCare’s religious values. Despite having a duty of care to the people who come to it for help, CompassCare deliberately hides this information to confuse and dupe people, like Ms. Kamke, about the nature of its “care” and services to give CompassCare access to people seeking

³¹ Jim Harden, *Why is Christianity Key to CompassCare*, COMPASSCARE COMMUNITY (Aug. 9, 2016), <https://www.compasscarecommunity.com/2016/08/why-is-christianity-key-to-compasscare/>.

³² *About*, OPTIMIZE BY COMPASSCARE (last accessed Dec. 18, 2023), <https://www.ccoptimize.com/about/>.

³³ *CompassCare, et al. v. Cuomo, et al.*, No. 1:19-cv-1409-TJM-DJS (N.D.N.Y.), Dkt. 1.

abortions and pressure and prevent them from getting abortions. Ultimately, CompassCare aims to deceive individuals like Ms. Kamke into thinking that if they come to CompassCare, they will receive unbiased and accurate information about their reproductive health and may be able to receive abortion services. This is nothing but a ruse in service of CompassCare's anti-abortion enterprise.

26. CompassCare profits and funds its anti-abortion enterprise by fundraising off of people like Ms. Kamke. CompassCare's consumer-facing website features a "Donate" button on the top right. That page urges visitors to donate to CompassCare to "help turn fear into confidence."³⁴ Ex. I at 2. On its Christian community-facing website, CompassCare is even more direct with how it leverages women like Ms. Kamke for its financial goals, soliciting donations with a plea that "Your gift of \$570 helps one woman seriously considering abortion have her baby, from marketing through 12 months of follow-up!"³⁵ Ex. J at 2.

27. To that end, in November 2023, CompassCare issued a press release announcing a fundraising goal of \$1.2 million in service of its plan to expand again, this time "into the heart of the American abortion capital" (otherwise known as New York City) to "continue saving women and babies from the serial malpractice and mercenary abortion empire."³⁶ Ex. K at 2–3. In its announcement, CompassCare "invite[d] supporters" to contribute to these goals. *Id.* at 3. In short, CompassCare's ability to dupe people like Ms. Kamke to come to its facilities is central to its ability to fundraise off of them and further expand its enterprises.

³⁴ *Donate*, COMPASSCARE (last accessed Dec. 18, 2023), <https://www.compasscare.info/donate/>

³⁵ *Protect Pro-Life Services and Save More Lives from the Abortion Capital of the US*, COMPASSCARE COMMUNITY (last accessed Dec. 18, 2023), <https://www.compasscarecommunity.com/donate-now/>

³⁶ Press Release, *CompassCare Receives Generous Support to Expand Ethical Medical Care in New York* (Nov. 20, 2023), available at <https://finance.yahoo.com/news/compasscare-receives-generous-support-expand-220000177.html>.

C. CompassCare Misrepresented Itself to Ms. Kamke and Falsely Told Her She Had a “Miracle” Pregnancy.

28. On or about November 27, 2021, Ms. Kamke suspected that she might be pregnant as her menstrual cycle was several weeks late. She took multiple over-the-counter pregnancy tests. Each of the pregnancy tests returned a positive result, indicating that Ms. Kamke was probably pregnant. Ms. Kamke wanted to confirm the pregnancy with an ultrasound and, if she was actually pregnant, obtain an abortion. Due to her financial circumstances, she was also seeking free reproductive health services.

29. On or about November 27, 2021, Ms. Kamke conducted a search on Google.com for abortion services in Buffalo. CompassCare was one of the top results from Ms. Kamke’s search. Based on the Google result, CompassCare’s corresponding listing as an abortion clinic, and the contents of its compasscare.info website—which nowhere stated expressly that it did not provide abortion and instead touted the “unbiased” medical services it provides and falsely advertised itself at every turn as a legitimate nondenominational reproductive healthcare facility—CompassCare led Ms. Kamke to believe they could provide her with free abortion services and unbiased and accurate reproductive health services. Ms. Kamke’s misplaced reliance was by CompassCare’s design.

30. Ms. Kamke was entirely unaware of CompassCare’s Christian community-facing websites and of the information they contained since they notably (and by CompassCare’s design) did *not* come up in her Google search for abortion services in Buffalo. She had no idea that CompassCare is a faith-based anti-abortion organization and not a legitimate health clinic. Ms. Kamke’s incorrect belief was the intended result of CompassCare’s fraudulent misrepresentations on its consumer-facing website.

31. Accordingly, on November 27, 2021, Ms. Kamke called and left a voicemail with CompassCare's Amherst Facility. A CompassCare employee called her back that same day. During this call, Ms. Kamke informed the CompassCare employee that she thought she was pregnant and directly asked the employee if CompassCare provided abortions. Ms. Kamke also told the CompassCare employee that if she was in fact pregnant, she wanted an abortion. But the employee misled Ms. Kamke as to whether CompassCare provided abortion services. In accordance with CompassCare's deceptive strategy, the employee failed to specify what services CompassCare provided and did not clearly answer whether CompassCare provided or referred for abortions. CompassCare failed to provide a truthful and complete information to Ms. Kamke, inducing her to seek assistance from CompassCare under the guise of free and reliable reproductive health services. Based on the CompassCare's employee's misrepresentations and obfuscations and the false advertisements on CompassCare's website about its nature and services, Ms. Kamke scheduled an appointment with CompassCare at their Amherst Facility. This was the intended outcome of CompassCare's deceptive conduct.

32. On December 1, 2021, Ms. Kamke arrived at CompassCare's Amherst Facility. At this point, she suspected she was about 6 weeks pregnant. Ms. Kamke specifically went to CompassCare because it purported to offer services free of charge and she could not afford to go elsewhere. Upon Ms. Kamke's arrival, a CompassCare employee asked her to sign several releases. Ex. L at 10–13. Only at this point—after entering CompassCare prepared to receive healthcare—was Ms. Kamke finally able to realize that CompassCare was a religious organization. Likewise, only when Ms. Kamke was sitting in CompassCare's waiting room, reviewing the provided releases, was she finally in a position to learn that CompassCare did not provide abortion services. Even at this juncture, CompassCare did not present this information

to her forthrightly. Instead, at the very bottom of one of CompassCare’s releases, is the statement that “CompassCare does not perform or refer for abortion.” *Id.* at 10. But CompassCare’s campaign of misinformation targeting people looking for free reproductive services, including abortion care, had succeeded: although Ms. Kamke now knew that she could not receive the complete healthcare she might require, she did not leave because she needed a free pregnancy test and ultrasound.

33. The releases committed to Ms. Kamke that CompassCare had a duty to provide her with “a non-biased presentation of *all* her pregnancy-related options” and “objective information about *all* of her legal options related to pregnancy and pregnancy termination.” *Id.* (emphasis added). This was a material misrepresentation of the services provided by CompassCare, which requires all its employees to “agree to never refer or advise any woman to have an abortion and to uphold the organization’s policy on birth control, which is abstinence only for unmarried patients.” *CompassCare, et al. v. Cuomo, et al.*, No. 1:19-cv-1409-TJM-DJS, Dkt. 1, ¶ 88.

34. Finally, one of the releases Ms. Kamke signed stated:

The medical services are all referrals and are not performed or provided by CompassCare but rather by licensed medical professionals. A *physician* must confirm your pregnancy test with an ultrasound to determine viability.

Ex. L at 10 (emphasis added). In other words, this release unambiguously confirmed that a medical doctor would be conducting and reviewing any ultrasound performed during Ms. Kamke’s visit at CompassCare. But that is not what happened.

35. After Ms. Kamke had signed the releases, the CompassCare receptionist directed Ms. Kamke to a bathroom where she took a hCG pregnancy test, which is the same as an at-home pregnancy test. After Ms. Kamke had taken the test, the receptionist directed Ms. Kamke to an examination room and instructed her to wait there while the pregnancy test was processed in

CompassCare's lab. While Ms. Kamke waited, she reviewed pamphlets on abortion pill reversal and the prevalence of sexually transmitted disease ("STD") in the United States. Janet Chapman, a registered nurse employed at CompassCare's Amherst Facility, entered the examination room. Ms. Kamke asked Chapman about the pamphlet and Chapman explained that individuals who obtained abortions were more likely to be sexually promiscuous and, therefore, more likely to get STDs. Chapman's comment made Ms. Kamke feel stigmatized and shamed.

36. To Ms. Kamke's increasing discomfort, Chapman proselytized to Ms. Kamke for approximately twenty minutes. During the course of this exhortation, Chapman preached to Ms. Kamke that "God needs every child to be born" and if Ms. Kamke were pregnant "it was God saying it was her time to be a mother, which was what [Ms. Kamke] was put on this Earth to do." During this conversation, Ms. Kamke asked Chapman if CompassCare offered abortions; Chapman finally informed Ms. Kamke that CompassCare did not provide abortions because "God does not want abortions." Ms. Kamke strongly disagreed with these views. Nevertheless, Chapman asked Ms. Kamke if she wanted to pray together. Chapman also pried into Ms. Kamke's religious beliefs, questioning her on whether she regularly attended church or had a congregation. Chapman also tried to induce her into speaking to women who had chosen to carry their pregnancies to term instead of getting an abortion. Chapman's intrusive questions and proselytizing make Ms. Kamke feel anxious, distressed, and uncomfortable in an already vulnerable and nerve-wracking situation. Ms. Kamke still, however, needed the results of her pregnancy test.

37. Chapman, after receiving the results of Ms. Kamke's pregnancy test, then informed Ms. Kamke that her pregnancy test was negative. Although on its website CompassCare states that it only provides ultrasounds after a positive pregnancy test, Chapman suggested that Ms.

Kamke also receive a transvaginal ultrasound to confirm the pregnancy test's results. With respect to the transvaginal ultrasound itself, however, Chapman failed to obtain Ms. Kamke's informed consent. Specifically, Chapman failed to provide Ms. Kamke with adequate information about the procedure, any associated risks, and the limitations of transvaginal ultrasounds in assessing fetal development. As such, and still believing that she was receiving professional care, Ms. Kamke agreed to the ultrasound, an intimate procedure whereby an instrument called a transducer is inserted through the person's vagina. Ms. Kamke would not have agreed to the ultrasound had she known that a physician would not be involved in its administration or review.

38. Chapman, who is not a doctor, administered Ms. Kamke's ultrasound, despite CompassCare's statement in the release that a physician would be the one to do so.



While conducting the ultrasound, Chapman informed Ms. Kamke that the ultrasound showed no “fetal pole” and confirmed that Ms. Kamke was not pregnant. Chapman said nothing else about what the ultrasound showed.

39. After Chapman concluded the ultrasound, another CompassCare employee entered Ms. Kamke's examination room. She announced to Ms. Kamke that there had been a “miracle”

that had turned Ms. Kamke's negative pregnancy test positive and now Ms. Kamke was pregnant. Chapman—who had just moments before told Ms. Kamke that the ultrasound showed no sign of a fetus—did not correct or refute this pronouncement. Despite having a duty to do so, no one at CompassCare informed Ms. Kamke that it was impossible for a negative pregnancy test to become positive through a “miracle.” Rather, CompassCare irresponsibly and incorrectly told Ms. Kamke that she was pregnant despite receiving an ultrasound result that Chapman had admitted showed no indicia of pregnancy in violation of their duty of care.

40. Ms. Kamke, feeling demoralized and violated from this experience, immediately left CompassCare. It became clear to her that the employees at CompassCare had lied to her about the nature of the organization and the services they provided. She left confused about if she was pregnant or not. Ms. Kamke lived with this agonizing unclarity for weeks and conducted worried Google searches for images of ultrasounds showing pregnancies to compare to her own ultrasound to try and figure out the truth. Ultimately, Ms. Kamke was not pregnant, but to this day feels humiliated and angry by CompassCare's deception.

41. Ms. Kamke's overall experience at CompassCare was highly distressing. She had been lured to CompassCare under the false pretense of free abortion care, subjected to disdain for her sexual activity, and forced to listen to religious proselytization when she only needed reproductive health services. CompassCare's duplicity inflicted unnecessary trauma upon Ms. Kamke—who was already facing the challenges of a possible unplanned pregnancy. Ms. Kamke felt traumatized by CompassCare's attempts to brainwash and gaslight her during her visit and began abusing alcohol to manage her anguish. Ms. Kamke's severe distress from her experience at CompassCare also caused her job performance to decline, derailed her career, and resulted in the end of certain personal relationships.

42. Ms. Kamke’s records from her visit to CompassCare unequivocally demonstrate that Ms. Kamke’s pregnancy test was negative. *See* Ex. L at 6–9. The records, which were subpoenaed and produced in connection with Ms. Kamke’s criminal proceedings, concealed that CompassCare performed a transvaginal ultrasound on Ms. Kamke during her visit. There is no mention of the transvaginal ultrasound anywhere in these records. *Id.* Additionally, the records state that Chapman followed up with Ms. Kamke on January 5, 2022. *Id.* at 6. This is inaccurate. Ms. Kamke has had no contact with CompassCare since the December 1, 2021 appointment at the Amherst Facility. Finally, the records from CompassCare indicate that Dr. Theresa Rush is the medical director and the sole doctor employed by CompassCare’s Amherst Facility. *Id.* However, Ms. Kamke did not interact with Dr. Rush—or any other physician—during her visit despite receiving a transvaginal ultrasound.

43. On March 16, 2023, Ms. Kamke spraypainted “LIARS” on a sign outside of CompassCare’s Amherst Facility—the very facility she had gone to just a few months prior for help. Ms. Kamke did *not* act out of a broader political motive or to make a statement about abortion writ large. Rather, her actions were based solely on her own personal experience as a care-seeker at CompassCare, which caused her anger, frustration, and emotional trauma. What made CompassCare “liars” in her view was that its employees had told her she was pregnant through a “miracle” when she was not and that in every step of her interactions with CompassCare, CompassCare had misled her about the nature of the organization and the services it provided. Ms. Kamke felt violated and betrayed by CompassCare and its employees to whom she had gone for unbiased assistance in a vulnerable time in her life.

44. In connection with her conduct, Ms. Kamke pled guilty to a single charge of disorderly conduct (Penal Law § 240.20(7)) in Amherst Town Court. Pursuant to her plea, Ms.

Kamke paid full restitution of \$2,580 to CompassCare for any and all property damage caused by her actions. Ms. Kamke also consented to an oral admonition by Amherst Town Court to stay away from CompassCare's Amherst Facility.

45. By paying restitution, Ms. Kamke has made CompassCare whole. Ms. Kamke, however, remains traumatized by her experience with CompassCare. Ms. Kamke suffered significant pecuniary damages as a result of her experience with CompassCare. Prior to the March 16, 2023 incident, Ms. Kamke was employed by Person Centered Services as a Care Coordinator, where she made approximately \$42,000 per year. She was terminated after the incident with CompassCare and has not been able to find stable and long-term employment since. She has worked for Uber, Lyft, and Roadie to try to supplement her lost income and repeatedly interviewed for permanent positions to no avail.

COUNT I
(Deceptive Business Practices)
N.Y. General Business Law § 349

46. Counterclaim Plaintiff Kamke repeats and realleges the foregoing paragraphs as if set forth fully herein.

47. In the course of its business, trade, and commerce, and in the furnishing of its services, Counterclaim Defendant CompassCare engaged in deceptive practices. CompassCare directly profits from fundraising off of the organization's mission to dissuade and prevent women, like Ms. Kamke, from obtaining abortions and its ability to attract them, through its advertising content, to its facilities. CompassCare's deceptive practices were effectuated through false and misleading statements and omissions in its consumer-oriented advertising and interactions with Ms. Kamke, in particular on its consumer-facing website, compasscare.info, in searches performed by consumers like Ms. Kamke for abortion care in Buffalo, and in CompassCare employees'

interactions with Ms. Kamke. These false and misleading statements and omissions include but are not limited to:

- a. Engineering its search engine optimization to falsely present itself to people seeking reproductive healthcare including abortions, including Ms. Kamke, as an organization that offered abortion care;
- b. Falsely stating on its consumer-facing website, compasscare.info, that it offered “truly unbiased information” and was “objective and non-judgmental,” despite being a faith-based, mission-driven anti-abortion organization that was neither unbiased nor objective and non-judgmental;
- c. Deliberately misrepresenting itself on its consumer-facing website as a legitimate and licensed healthcare provider of reproductive health services by describing itself as “[u]pstate NY’s leader in women’s reproductive health”; stating that its “professional staff is dedicated to providing medically accurate and confidential abortion information, pregnancy diagnosis, as well as STD testing and treatment”; stating on its website that it provides “Medical Services,” which include “Pre-Termination Evaluation,” “Diagnostic Pregnancy Services,” “STD Testing and Treatment,” and “Abortion Pill Reversal”; stating that it has “state-of-the-art” “professional” “medical facilities” to serve “patients”; touting that it “adheres to the principles of traditional medical ethics, which are found in the relationship between patient and doctor”; and describing its hours of operation as “Patient Service Hours.” Each of these statements is designed to misrepresent CompassCare as a legitimate reproductive healthcare services provider to deceive consumers;
- d. Deliberately misrepresenting itself as providing reproductive health services when its true mission was to “eras[e]” abortion and cut down abortion by 50% in New York , “continue saving women and babies from the serial malpractice and mercenary abortion empire,” a mission for which it routinely solicited donations on the compasscarecommunity.com;
- e. Falsely informing Ms. Kamke in the release that she signed that her transvaginal ultrasound would be performed by a physician and its results reviewed by a physician;
- f. Falsely informing Ms. Kamke that her previously negative pregnancy test had turned positive through a “miracle”;
- g. Declining to disclose to Ms. Kamke on its primary consumer-facing website, compasscare.info, and during Ms. Kamke’s November 27 phone call with a CompassCare employee that CompassCare was not licensed by the New York State Department of Health or any other New York state agency to provide reproductive healthcare services;

- h. Deliberately concealing from Ms. Kamke on its primary consumer-facing website, compasscare.info, and during Ms. Kamke's November 27 phone call with a CompassCare employee that CompassCare did not offer or refer for abortion services, even when Ms. Kamke directly asked the CompassCare employee during their phone call whether CompassCare could help her in getting an abortion;
- i. Declining to disclose to Ms. Kamke on its primary consumer-facing website, compasscare.info, and during Ms. Kamke's November 27 phone call with a CompassCare employee that CompassCare was a faith-based anti-abortion organization, not a nondenominational reproductive healthcare services provider;
- j. Deliberately concealing from Ms. Kamke on its primary consumer-facing website, compasscare.info, and during Ms. Kamke's November 27 phone call with a CompassCare employee that CompassCare could not offer her unbiased healthcare because of the religious orientation of the organization and employees;
- k. Directly concealing that a CompassCare employee performed a transvaginal ultrasound on Ms. Kamke during her December 1 visit when responding to a subpoena for her records in connection with her criminal proceeding; and
- l. Falsely informing Ms. Kamke that she would receive free and unbiased reproductive health services when, in fact, she would exclusively get faith-based counseling designed to dissuade her from obtaining reproductive health services—i.e. an abortion.

48. CompassCare's deceptive acts and practices are used to influence consumers seeking reproductive healthcare, including Ms. Kamke, to come to CompassCare under false pretenses so that they can dissuade consumers from exercising their reproductive health choices.

49. CompassCare's deceptive acts and practices are material and misled Ms. Kamke, a reasonable consumer acting reasonably under the circumstances.

50. CompassCare's deceptive acts and practices affect the public interest in New York because Ms. Kamke, a consumer located in New York, has suffered injury by availing herself of CompassCare's services as a result of CompassCare's deceptive acts and practices.

51. Ms. Kamke was harmed by the experience of going to CompassCare including by being subject to inadequate counseling regarding her reproductive health, told that she was

pregnant when she was not, being proselytized to by a CompassCare employee, and facing hostile and demeaning comments about her sexual activity.

52. Ms. Kamke suffered severe emotional harm and trauma as a consequence of her visit to CompassCare, including alcohol abuse, the dissolution of certain personal relationships, and caused her economic harm by a decline in her career, including lost wages. Even years later, Ms. Kamke feels deceived and angry that a mission-driven advocacy group could lie to vulnerable women about being a legitimate and unbiased health care provider to further their own agenda.

53. As a result of Counterclaim Defendant CompassCare's deceptive acts and practices, Counterclaim Plaintiff Kamke is entitled to recover damages, punitive damages, and reasonable attorneys' fees.

COUNT II
(False Advertising)
N.Y. General Business Law § 350

54. Counterclaim Plaintiff Kamke repeats and realleges the foregoing paragraphs as if set forth fully herein.

55. In the course of its business, trade, and commerce, and the furnishing of its services, Counterclaim Defendant CompassCare engaged in deceptive practices through its advertising activities. CompassCare directly profits from fundraising off of the organization's mission to dissuade and prevent women, like Ms. Kamke, from obtaining abortions, and its ability to attract them, through its advertising content, to its facilities. CompassCare's deceptive practices were effectuated through false and misleading statements and omissions in its consumer-oriented advertising on its consumer-facing website, compasscare.info, and in searches performed by Ms. Kamke for abortion care in Buffalo. These false and misleading statements and omissions include but are not limited to:

- a. Engineering its search engine optimization to falsely present itself to people seeking reproductive healthcare including abortions, including Ms. Kamke, as an organization that offered abortion care;
- b. Falsely stating on its consumer-facing website, compasscare.info, that it offered “truly unbiased information” and was “objective and non-judgmental,” despite being a faith-based, mission-driven anti-abortion organization that was neither unbiased nor objective and non-judgmental;
- c. Deliberately misrepresenting itself on its consumer-facing website as a legitimate and licensed healthcare provider of reproductive health services by describing itself as “[u]pstate NY’s leader in women’s reproductive health”; stating that its “professional staff is dedicated to providing medically accurate and confidential abortion information, pregnancy diagnosis, as well as STD testing and treatment”; stating on its website that it provides “Medical Services,” which include “Pre-Termination Evaluation,” “Diagnostic Pregnancy Services,” “STD Testing and Treatment,” and “Abortion Pill Reversal”; stating that it has “state-of-the-art” “professional” “medical facilities” to serve “patients”; touting that it “adheres to the principles of traditional medical ethics, which are found in the relationship between patient and doctor”; and describing its hours of operation as “Patient Service Hours.” Each of these statements is designed to misrepresent CompassCare as a legitimate reproductive healthcare services provider to deceive consumers;
- d. Deliberately misrepresenting itself as providing reproductive health services when its true mission was to “eras[e]” abortion and cut down abortion by 50% in New York , “continue saving women and babies from the serial malpractice and mercenary abortion empire,” a mission for which it routinely solicited donations on the compasscarecommunity.com website;
- e. Falsely informing Ms. Kamke in the release that she signed that her transvaginal ultrasound would be performed by a physician and its results reviewed by a physician;
- f. Falsely informing Ms. Kamke that her previously negative pregnancy test had turned positive through a “miracle”;
- g. Declining to disclose to Ms. Kamke on its primary consumer-facing website, compasscare.info, and during Ms. Kamke’s November 27 phone call with a CompassCare employee that CompassCare was not licensed by the New York State Department of Health or any other New York state agency to provide reproductive healthcare services;
- h. Deliberately concealing from Ms. Kamke on its primary consumer-facing website, compasscare.info, and during Ms. Kamke’s November 27 phone call with a CompassCare employee that CompassCare did not offer or refer for abortion services, even when Ms. Kamke directly asked the CompassCare

employee during their phone call whether CompassCare could help her in getting an abortion;

- i. Declining to disclose to Ms. Kamke on its primary consumer-facing website, compasscare.info, and during Ms. Kamke's November 27 phone call with a CompassCare employee that CompassCare was a faith-based anti-abortion organization, not a nondenominational reproductive healthcare services provider;
- j. Deliberately concealing from Ms. Kamke on its primary consumer-facing website, compasscare.info, and during Ms. Kamke's November 27 phone call with a CompassCare employee that CompassCare could not offer her unbiased healthcare because of the religious orientation of the organization and employees;
- k. Directly concealing that a CompassCare employee performed a transvaginal ultrasound on Ms. Kamke during her December 1 visit when responding to a subpoena for her records in connection with her criminal proceeding; and
- l. Falsely informing Ms. Kamke that she would receive free and unbiased reproductive health services when, in fact, she would exclusively get faith-based counseling designed to dissuade her from obtaining reproductive health services—i.e. an abortion.

56. CompassCare's false advertising is used to influence consumers seeking reproductive healthcare, including Ms. Kamke, to come to CompassCare under false pretenses. CompassCare's false statements in its advertising were material and misled Ms. Kamke, a reasonable consumer acting reasonably under the circumstances.

57. CompassCare's false advertising affects the public interest in New York because, Ms. Kamke, a consumer located in New York, has suffered injury by availing herself of CompassCare's services as a result of its false advertising.

58. Ms. Kamke was harmed by the experience of going to CompassCare including by being subject to inadequate counseling regarding her reproductive health, told that she was pregnant when she was not, being proselytized to by a CompassCare employee, and facing hostile and demeaning comments about her sexual activity.

59. Ms. Kamke suffered severe emotional harm and trauma as a consequence of her visit to CompassCare, including alcohol abuse, the dissolution of certain personal relationships, and caused her economic harm by a decline in her career. Ms. Kamke's career was derailed and she suffered pecuniary injuries in the form of lost wages and job opportunities. Even years later, Ms. Kamke feels deceived and angry that a mission-driven advocacy group could lie to vulnerable women about being a legitimate and unbiased health care provider to further their own agenda.

60. As a result of Counterclaim Defendant CompassCare's false advertising, Counterclaim Plaintiff Kamke is entitled to recover damages, punitive damages, and reasonable attorneys' fees.

COUNT III
(Fraudulent Misrepresentation)

61. Counterclaim Plaintiff Kamke repeats and realleges the foregoing paragraphs as if set forth fully herein.

62. CompassCare directly profits from fundraising off of the organization's mission to dissuade and prevent women, like Ms. Kamke, from obtaining abortions, and its ability to attract them to its facilities. Counterclaim Defendant CompassCare intentionally misrepresented and omitted material facts to Ms. Kamke about its nature and the services it provides during its interactions with Ms. Kamke, including but not limited to:

- a. Engineering its search engine optimization to falsely present itself to people seeking reproductive healthcare including abortions, including Ms. Kamke, as an organization that offered abortion care;
- b. Falsely stating on its consumer-facing website, compasscare.info, that it offered "truly unbiased information" and was "objective and non-judgmental," despite being a faith-based, mission-driven anti-abortion organization that was neither unbiased nor objective and non-judgmental;
- c. Deliberately misrepresenting itself on its consumer-facing website as a legitimate and licensed healthcare provider of reproductive health services by describing itself as "[u]pstate NY's leader in women's reproductive health";

stating that its “professional staff is dedicated to providing medically accurate and confidential abortion information, pregnancy diagnosis, as well as STD testing and treatment”; stating on its website that it provides “Medical Services,” which include “Pre-Termination Evaluation,” “Diagnostic Pregnancy Services,” “STD Testing and Treatment,” and “Abortion Pill Reversal”; stating that it has “state-of-the-art” “professional” “medical facilities” to serve “patients”; touting that it “adheres to the principles of traditional medical ethics, which are found in the relationship between patient and doctor”; and describing its hours of operation as “Patient Service Hours.” Each of these statements is designed to misrepresent CompassCare as a legitimate reproductive healthcare services provider to deceive consumers;

- d. Deliberately misrepresenting itself as providing reproductive health services when its true mission was to “eras[e]” abortion and cut down abortion by 50% in New York , “continue saving women and babies from the serial malpractice and mercenary abortion empire,” a mission for which it routinely solicited donations on the compasscarecommunity.com;
- e. Falsely informing Ms. Kamke in the release that she signed that her transvaginal ultrasound would be performed by a physician and its results reviewed by a physician;
- f. Falsely informing Ms. Kamke that her previously negative pregnancy test had turned positive through a “miracle”;
- g. Declining to disclose to Ms. Kamke on its primary consumer-facing website, compasscare.info, and during Ms. Kamke’s November 27 phone call with a CompassCare employee that CompassCare was not licensed by the New York State Department of Health or any other New York state agency to provide reproductive healthcare services;
- h. Deliberately concealing from Ms. Kamke on its primary consumer-facing website, compasscare.info, and during Ms. Kamke’s November 27 phone call with a CompassCare employee that CompassCare did not offer or refer for abortion services, even when Ms. Kamke directly asked the CompassCare employee during their phone call whether CompassCare could help her in getting an abortion;
- i. Declining to disclose to Ms. Kamke on its primary consumer-facing website, compasscare.info, and during Ms. Kamke’s November 27 phone call with a CompassCare employee that CompassCare was a faith-based anti-abortion organization, not a nondenominational reproductive healthcare services provider;
- j. Deliberately concealing from Ms. Kamke on its primary consumer-facing website, compasscare.info, and during Ms. Kamke’s November 27 phone call with a CompassCare employee that CompassCare could not offer her unbiased

healthcare because of the religious orientation of the organization and employees;

- k. Directly concealing that a CompassCare employee performed a transvaginal ultrasound on Ms. Kamke during her December 1 visit when responding to a subpoena for her records in connection with her criminal proceeding; and
- l. Falsely informing Ms. Kamke that she would receive free and unbiased reproductive health services when, in fact, she would exclusively get faith-based counseling designed to dissuade her from obtaining reproductive health services—i.e. an abortion.

63. These misrepresentations constitute actionable misrepresentations of material facts. CompassCare knew the material representations were false and misleading and that it had not disclosed material information to Ms. Kamke relevant to her decision to come to CompassCare.

64. Despite knowing that Ms. Kamke was looking for a provider of objective, complete, and honest advice regarding her reproductive health, including on abortion, CompassCare made these misrepresentations and omissions deliberately to mislead Ms. Kamke into believing that CompassCare was a legitimate healthcare provider that could provide her with unbiased, accurate, and reliable healthcare that would include abortion if needed. CompassCare further made the statement about Ms. Kamke's "miracle" pregnancy to deliberately mislead her into believing she was pregnant so that she would come back to CompassCare and continue to be exposed to their anti-abortion views. These misrepresentations and omissions were made as part of their ongoing scheme to prevent and deter pregnant people from exercising choices about their reproductive health and to advance CompassCare's agenda of eradicating abortion.

65. Ms. Kamke's reliance on CompassCare's misrepresentations and omissions—of which CompassCare had superior knowledge—was justifiable and as a result, Ms. Kamke, who was in crisis and had limited resources, was induced to go to CompassCare for help to her detriment.

66. Ms. Kamke would not have gone to CompassCare had it not concealed these material facts.

67. Ms. Kamke was harmed by the experience of going to CompassCare including by being subject to inadequate and inaccurate counseling regarding her reproductive health, told that she was pregnant when she was not, being proselytized to by a CompassCare employee, and facing hostile and demeaning comments about her sexual activity. As a result of CompassCare's conduct Ms. Kamke's career was derailed and she suffered pecuniary injuries in the form of lost wages and job opportunities.

68. Counterclaim Defendant CompassCare's actions were willful, intentional, knowing, and malicious.

69. As a result of Counterclaim Defendant CompassCare's fraud, concealment, and failure to disclose material facts, Counterclaim Plaintiff is entitled to all general and special damages caused by CompassCare's misconduct and punitive damages to deter others from engaging in similar schemes, and costs and disbursements.

COUNT IV
(Fraudulent Concealment)

70. Counterclaim Plaintiff Kamke repeats and realleges the foregoing paragraphs as if set forth fully herein.

71. CompassCare directly profits from fundraising off of the organization's mission to dissuade and prevent women, like Ms. Kamke, from obtaining abortions, and its ability to attract them to its facilities. Counterclaim Defendant CompassCare intentionally suppressed and concealed material facts from Ms. Kamke about its nature and the services it provides during its interactions with Ms. Kamke, including but not limited to:

- a. Engineering its search engine optimization to falsely present itself to people seeking reproductive healthcare including abortions, including Ms. Kamke, as an organization that offered abortion care;
- b. Falsely stating on its consumer-facing website, compasscare.info, that it offered “truly unbiased information” and was “objective and non-judgmental,” despite being a faith-based, mission-driven anti-abortion organization that was neither unbiased nor objective and non-judgmental;
- c. Deliberately misrepresenting itself on its consumer-facing website as a legitimate and licensed healthcare provider of reproductive health services by describing itself as “[u]pstate NY’s leader in women’s reproductive health”; stating that its “professional staff is dedicated to providing medically accurate and confidential abortion information, pregnancy diagnosis, as well as STD testing and treatment”; stating on its website that it provides “Medical Services,” which include “Pre-Termination Evaluation,” “Diagnostic Pregnancy Services,” “STD Testing and Treatment,” and “Abortion Pill Reversal”; stating that it has “state-of-the-art” “professional” “medical facilities” to serve “patients”; touting that it “adheres to the principles of traditional medical ethics, which are found in the relationship between patient and doctor”; and describing its hours of operation as “Patient Service Hours.” Each of these statements is designed to misrepresent CompassCare as a legitimate reproductive healthcare services provider to deceive consumers;
- d. Deliberately misrepresenting itself as providing reproductive health services when its true mission was to “eras[e]” abortion and cut down abortion by 50% in New York , “continue saving women and babies from the serial malpractice and mercenary abortion empire,” a mission for which it routinely solicited donations on the compasscarecommunity.com;
- e. Falsely informing Ms. Kamke in the release that she signed that her transvaginal ultrasound would be performed by a physician and its results reviewed by a physician;
- f. Falsely informing Ms. Kamke that her previously negative pregnancy test had turned positive through a “miracle”;
- g. Declining to disclose to Ms. Kamke on its primary consumer-facing website, compasscare.info, and during Ms. Kamke’s November 27 phone call with a CompassCare employee that CompassCare was not licensed by the New York State Department of Health or any other New York state agency to provide reproductive healthcare services;
- h. Deliberately concealing from Ms. Kamke on its primary consumer-facing website, compasscare.info, and during Ms. Kamke’s November 27 phone call with a CompassCare employee that CompassCare did not offer or refer for abortion services, even when Ms. Kamke directly asked the CompassCare

employee during their phone call whether CompassCare could help her in getting an abortion;

- i. Declining to disclose to Ms. Kamke on its primary consumer-facing website, compasscare.info, and during Ms. Kamke's November 27 phone call with a CompassCare employee that CompassCare was a faith-based anti-abortion organization, not a nondenominational reproductive healthcare services provider;
- j. Deliberately concealing from Ms. Kamke on its primary consumer-facing website, compasscare.info, and during Ms. Kamke's November 27 phone call with a CompassCare employee that CompassCare could not offer her unbiased healthcare because of the religious orientation of the organization and employees;
- k. Directly concealing that a CompassCare employee performed a transvaginal ultrasound on Ms. Kamke during her December 1 visit when responding to a subpoena for her records in connection with her criminal proceeding; and
- l. Falsely informing Ms. Kamke that she would receive free and unbiased reproductive health services when, in fact, she would exclusively get faith-based counseling designed to dissuade her from obtaining reproductive health services—i.e. an abortion.

72. Counterclaim Defendant CompassCare had a duty to disclose these material facts to Ms. Kamke because they were in a position of superior knowledge of the above-mentioned information, which they deliberately did not include on their consumer-facing website and concealed from her during their communications.

73. By virtue of Ms. Kamke's reasonable reliance on CompassCare's duty to provide complete and accurate information to her about the organization, Ms. Kamke was induced to go to CompassCare for help to her detriment.

74. Ms. Kamke—who, at the time, was vulnerable in need of help, and financially constrained—would not have gone to CompassCare had it not concealed these material facts.

75. Ms. Kamke was harmed by the experience of going to CompassCare including by being subject to inadequate and inaccurate counseling regarding her reproductive health, told that she was pregnant when she was not, being proselytized to by a CompassCare employee, and facing

hostile and demeaning comments about her sexual activity. As a result of CompassCare's conduct Ms. Kamke's career was derailed and she suffered pecuniary injuries in the form of lost wages and job opportunities.

76. Counter-Defendant CompassCare's actions were willful, intentional, knowing and malicious.

77. As a result of Counterclaim Defendant CompassCare's fraud, concealment, and failure to disclose material facts, Counterclaim Plaintiff Kamke is entitled to all general and special damages caused by CompassCare's misconduct and punitive damages to deter others from engaging in similar schemes, and costs and disbursements.

COUNT V
(Negligent Misrepresentation)

78. Counterclaim Plaintiff Kamke repeats and realleges the foregoing paragraphs as if set forth fully herein.

79. CompassCare directly profits from fundraising off of the organization's mission to dissuade and prevent women, like Ms. Kamke, from obtaining abortions, and its ability to attract them to its facilities. Counterclaim Defendant CompassCare misrepresented and omitted material facts to Ms. Kamke about its nature and the services it provides during its interactions with Ms. Kamke, including but not limited to:

- a. Engineering its search engine optimization to falsely present itself to people seeking reproductive healthcare including abortions, including Ms. Kamke, as an organization that offered abortion care;
- b. Falsely stating on its consumer-facing website, compasscare.info, that it offered "truly unbiased information" and was "objective and non-judgmental," despite being a faith-based, mission-driven anti-abortion organization that was neither unbiased nor objective and non-judgmental;
- c. Deliberately misrepresenting itself on its consumer-facing website as a legitimate and licensed healthcare provider of reproductive health services by describing itself as "[u]pstate NY's leader in women's reproductive health";

stating that its “professional staff is dedicated to providing medically accurate and confidential abortion information, pregnancy diagnosis, as well as STD testing and treatment”; stating on its website that it provides “Medical Services,” which include “Pre-Termination Evaluation,” “Diagnostic Pregnancy Services,” “STD Testing and Treatment,” and “Abortion Pill Reversal”; stating that it has “state-of-the-art” “professional” “medical facilities” to serve “patients”; touting that it “adheres to the principles of traditional medical ethics, which are found in the relationship between patient and doctor”; and describing its hours of operation as “Patient Service Hours.” Each of these statements is designed to misrepresent CompassCare as a legitimate reproductive healthcare services provider to deceive consumers;

- d. Deliberately misrepresenting itself as providing reproductive health services when its true mission was to “eras[e]” abortion and cut down abortion by 50% in New York , “continue saving women and babies from the serial malpractice and mercenary abortion empire,” a mission for which it routinely solicited donations on the compasscarecommunity.com;
- e. Falsely informing Ms. Kamke in the release that she signed that her transvaginal ultrasound would be performed by a physician and its results reviewed by a physician;
- f. Falsely informing Ms. Kamke that her previously negative pregnancy test had turned positive through a “miracle”;
- g. Declining to disclose to Ms. Kamke on its primary consumer-facing website, compasscare.info, and during Ms. Kamke’s November 27 phone call with a CompassCare employee that CompassCare was not licensed by the New York State Department of Health or any other New York state agency to provide reproductive healthcare services;
- h. Deliberately concealing from Ms. Kamke on its primary consumer-facing website, compasscare.info, and during Ms. Kamke’s November 27 phone call with a CompassCare employee that CompassCare did not offer or refer for abortion services, even when Ms. Kamke directly asked the CompassCare employee during their phone call whether CompassCare could help her in getting an abortion;
- i. Declining to disclose to Ms. Kamke on its primary consumer-facing website, compasscare.info, and during Ms. Kamke’s November 27 phone call with a CompassCare employee that CompassCare was a faith-based anti-abortion organization, not a nondenominational reproductive healthcare services provider;
- j. Deliberately concealing from Ms. Kamke on its primary consumer-facing website, compasscare.info, and during Ms. Kamke’s November 27 phone call with a CompassCare employee that CompassCare could not offer her unbiased

healthcare because of the religious orientation of the organization and employees;

- k. Directly concealing that a CompassCare employee performed a transvaginal ultrasound on Ms. Kamke during her December 1 visit when responding to a subpoena for her records in connection with her criminal proceeding; and
- l. Falsely informing Ms. Kamke that she would receive free and unbiased reproductive health services when, in fact, she would exclusively get faith-based counseling designed to dissuade her from obtaining reproductive health services—i.e. an abortion.

80. CompassCare knew that these statements and omissions were inaccurate, false, and misleading.

81. A special duty existed between Counterclaim Defendant CompassCare and Ms. Kamke because CompassCare was in a position of superior knowledge of the above-mentioned information, which they deliberately did not include on their consumer-facing website and concealed from her during their communications. This special duty also existed by virtue of CompassCare holding itself out to the public as a legitimate reproductive health care provider, even though in reality they were not. As such, CompassCare had a duty to accurately disclose the withheld or misleading information to her. CompassCare breached that duty when it did not do so.

82. By virtue of Ms. Kamke's reasonable reliance on CompassCare's duty to provide complete and accurate information to her about the organization, Ms. Kamke was induced to go to CompassCare for help to her detriment.

83. Ms. Kamke would not have gone to CompassCare for care had it not misrepresented or concealed these material facts.

84. Thus CompassCare knew or should have known that Ms. Kamke would rely on its misrepresentations and omissions about its nature and the services it provided and would rely on those misrepresentations and omissions in deciding to come to CompassCare for help.

85. Ms. Kamke was harmed by the experience of going to CompassCare including by being subject to inadequate and inaccurate counseling regarding her reproductive health, told that she was pregnant when she was not, being proselytized to by a CompassCare employee, and facing hostile and demeaning comments about her sexual activity. As a result of CompassCare's conduct Ms. Kamke's career was derailed and she suffered pecuniary injuries in the form of lost wages and job opportunities.

86. As a result of Counterclaim Defendant CompassCare's fraud, concealment, and failure to disclose material facts, Counterclaim Plaintiff Kamke is entitled to all general and special damages caused by CompassCare's misconduct; and costs and disbursements.

COUNT VI
(Negligence)

87. Counterclaim Plaintiff Kamke repeats and realleges the foregoing paragraphs as if set forth fully herein.

88. Counterclaim Defendant negligently misinformed Ms. Kamke that her negative pregnancy test—which was administered to her by the facility—had been turned positive through a “miracle” of God.

89. Counterclaim Defendant irresponsibly and incorrectly told Ms. Kamke that she was pregnant despite receiving an ultrasound result that they had admitted showed no indicia of pregnancy in violation of their duty of care. At a minimum, Ms. Kamke was owed accurate information as to the results of her pregnancy test. The pure fabrication of a negative pregnancy test turned positive by a “miracle” fell far below the minimum standard for acceptable care.

90. Additionally, Counterclaim Defendant CompassCare failed to disclose these material facts from Ms. Kamke about its nature and the services it provides during its interactions with Ms. Kamke, including but not limited to:

- a. Failing to disclose that CompassCare would not assist Ms. Kamke in getting an abortion, despite numerous opportunities to do so through their primary consumer-facing website, compasscare.info, and through Ms. Kamke's November 27, 2021 phone call with a CompassCare employee; and
- b. Failing to disclose that CompassCare was a faith-based anti-abortion organization, not a nondenominational reproductive healthcare services provider, despite numerous opportunities to do so through their primary consumer-facing website, compasscare.info, and through Ms. Kamke's November 27, 2021 phone call with a CompassCare employee;
- c. Failing to disclose that CompassCare could not offer her unbiased reproductive healthcare services because of the religious orientation of the organization and employees, despite numerous opportunities to do so through their primary consumer-facing website, compasscare.info, and through Ms. Kamke's November 27, 2021 phone call with a CompassCare employee; and
- d. Falsely informing Ms. Kamke that she would receive free and unbiased reproductive health services when, in fact, she would exclusively get faith-based counseling designed to dissuade her from obtaining reproductive health services—i.e. an abortion.

91. Counterclaim Defendant CompassCare had a duty to disclose these material facts to Ms. Kamke because it was in a position of superior knowledge of the above-mentioned information, which it deliberately did not include on its consumer-facing website and concealed from her during their communications.

92. By virtue of Ms. Kamke's reasonable reliance on CompassCare's duty to provide complete and accurate information to her about the organization, Ms. Kamke was induced to go to CompassCare for help to her detriment.

93. Ms. Kamke was harmed by the experience of going to CompassCare including by being subject to inadequate and inaccurate counseling regarding her reproductive health, told that she was pregnant when she was not, being proselytized to by a CompassCare employee, and facing hostile and demeaning comments about her sexual activity. Ms. Kamke suffered severe emotional harm and trauma as a consequence of her visit to CompassCare, including alcohol abuse, the dissolution of certain personal relationships, and a decline in her career. As a result of

CompassCare's conduct Ms. Kamke's career was derailed and she suffered pecuniary injuries in the form of lost wages and job opportunities. Even years later, Ms. Kamke feels deceived and angry that a mission-driven advocacy group could lie to vulnerable women about being a legitimate and unbiased health care provider to further its own agenda.

94. As a result of Counterclaim Defendant CompassCare's negligence, Counterclaim Plaintiff Kamke is entitled to all general and special damages caused by CompassCare's misconduct, and costs and disbursements.

COUNT VII
(Negligent Infliction of Emotional Distress)

95. Counterclaim Plaintiff Kamke repeats and realleges the foregoing paragraphs as if set forth fully herein.

96. Counterclaim Defendant negligently misinformed Ms. Kamke that her negative pregnancy test—which was administered to her by the facility—had been turned positive through a “miracle” of God.

97. Counterclaim Defendant irresponsibly and incorrectly told Ms. Kamke that she was pregnant despite receiving an ultrasound result that they had admitted showed no indicia of pregnancy in violation of their duty of care.

98. Additionally, Counterclaim Defendant CompassCare failed to disclose material facts from Ms. Kamke about its nature and the services it provides during its interactions with Ms. Kamke, including but not limited to:

- a. Failing to disclose that CompassCare would not assist Ms. Kamke in getting an abortion, despite numerous opportunities to do so through their primary consumer-facing website, compasscare.info, and through Ms. Kamke's November 27, 2021 phone call with a CompassCare employee; and
- b. Failing to disclose that CompassCare was a faith-based anti-abortion organization, not a nondenominational reproductive healthcare services provider, despite numerous opportunities to do so through their primary

consumer-facing website, compasscare.info, and through Ms. Kamke's November 27, 2021 phone call with a CompassCare employee;

- c. Failing to disclose that CompassCare could not offer her unbiased reproductive healthcare services because of the religious orientation of the organization and employees, despite numerous opportunities to do so through its primary consumer-facing website, compasscare.info, and through Ms. Kamke's November 27, 2021 phone call with a CompassCare employee; and
- d. Falsely informing Ms. Kamke that she would receive free and unbiased reproductive health services when, in fact, she would exclusively get faith-based counseling designed to dissuade her from obtaining reproductive health services—i.e. an abortion.

99. Counterclaim Defendant CompassCare had a duty to disclose these material facts to Ms. Kamke because it was in a position of superior knowledge of the above-mentioned information, which it deliberately did not include on its consumer-facing website and concealed from her during their communications.

100. By virtue of Ms. Kamke's reasonable reliance on CompassCare's duty to provide complete and accurate information to her about the organization, Ms. Kamke was induced to go to CompassCare for help to her detriment.

101. Ms. Kamke was harmed by the experience of going to CompassCare including by being subject to inadequate and inaccurate counseling regarding her reproductive health, told that she was pregnant when she was not, being proselytized to by a CompassCare employee, and facing hostile and demeaning comments about her sexual activity. Ms. Kamke suffered severe emotional harm and trauma as a consequence of her visit to CompassCare, including alcohol abuse, the dissolution of certain personal relationships, and a decline in her career. As a result of CompassCare's conduct Ms. Kamke's career was derailed and she suffered pecuniary injuries in the form of lost wages and job opportunities. Even years later, Ms. Kamke feels deceived and angry that a mission-driven advocacy group could lie to vulnerable women about being a legitimate and unbiased health care provider to further their own agenda.

102. As a result of Counterclaim Defendant CompassCare's negligence, Counterclaim Plaintiff Kamke is entitled to all general and special damages caused by CompassCare's misconduct, and costs and disbursements.

COUNT VIII
(Medical Malpractice)

103. Counterclaim Plaintiff Kamke repeats and realleges the foregoing paragraphs as if set forth fully herein.

104. Counterclaim Plaintiff Kamke maintains that Counterclaim Defendant CompassCare is not a legitimate reproductive healthcare services provider, but should this Court find otherwise, Ms. Kamke pleads this medical malpractice claim in the alternative.

105. Counterclaim Defendant failed to adhere to a basic standard of care when counseling Ms. Kamke about whether she was pregnant or not. The results of Ms. Kamke's ultrasound, administered by Nurse Chapman, unambiguously showed that Ms. Kamke was not pregnant. Despite this result, another CompassCare employee informed Ms. Kamke that her negative pregnancy test had turned positive through a "miracle" of God. Ms. Kamke was informed of this "miracle" in the presence of Chapman.

106. Despite the impossibility of this "miracle," no one at CompassCare, including Chapman, corrected the misinformation relayed to Ms. Kamke about the results of her pregnancy test. Rather, Ms. Kamke was left uncertain and confused about whether she was actually pregnant, despite receiving an ultrasound result that showed no indicia of pregnancy. CompassCare violated its general duty to exercise reasonable care when it provided Ms. Kamke with fabricated and incorrect information.

107. Additionally, Counterclaim Defendant CompassCare failed to obtain informed consent before administering the transvaginal ultrasound. Specifically, Chapman failed to provide

Ms. Kamke with adequate information about the procedure, any associated risks, and the limitations of transvaginal ultrasounds in assessing fetal development.

108. Ms. Kamke was harmed by the experience of going to CompassCare including by being subject to inadequate and inaccurate counseling regarding her reproductive health and being told that she was pregnant when she was not. Ms. Kamke suffered severe emotional harm and trauma as a consequence of her visit to CompassCare, including alcohol abuse, the dissolution of certain personal relationships, and a decline in her career. As a result of CompassCare's conduct Ms. Kamke's career was derailed and she suffered pecuniary injuries in the form of lost wages and job opportunities. Even years later, Ms. Kamke feels deceived and angry that a mission-driven advocacy group could lie to vulnerable women about being a legitimate and unbiased health care provider to further its own agenda.

109. As a result of Counterclaim Defendant CompassCare's negligence, Counterclaim Plaintiff Kamke is entitled to all general and special damages caused by Defendants' misconduct and punitive damages to deter others from engaging in similar schemes; costs and disbursements, and attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant relief as follows:

- a. An award to Counterclaim Plaintiff Kamke of compensatory damages against Counterclaim Defendant CompassCare for damages suffered, in amounts to be determined at trial;
- b. An award to Counterclaim Plaintiff Kamke of punitive damages against Counterclaim Defendant CompassCare, in amounts to be determined at trial;
- c. An award of reasonable attorneys' fees and litigation costs;

- d. Dismissal of Counterclaim Defendant CompassCare's complaint against Counterclaim Plaintiff Kamke with prejudice; and
- e. Such other relief that this Court may deem just, proper, and appropriate.

DEMAND FOR TRIAL BY JUDGE

Counterclaim Plaintiff respectfully demands a trial by judge for all issues so triable.

Dated: New York, New York
December 18, 2023

Respectfully Submitted,

DAVIS WRIGHT TREMAINE LLP

By: /s/ Elizabeth A. McNamara

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