

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

OPTUM,

Plaintiff,

v.

TENNESSEE STATE INSURANCE
COMMITTEE, LAURIE LEE, in her
official capacity as Executive Director of
Benefits Administration for the Tennessee
Department of Finance and Administration,
and MARTIN DANIEL,

Defendants.

Case No. _____

**VERIFIED COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiff Optum states for its Verified Complaint against Defendants the Tennessee State Insurance Committee, Laurie Lee, and Martin Daniel, as follows:

PARTIES

1. Optum is a corporation organized and existing under the laws of Delaware with its principal place of business in Minnesota. Optum provides benefit management, analytics, consulting, and other services to healthcare providers, health plans, government entities, and life sciences companies.

2. The Tennessee State Insurance Committee (the "State" or the "Committee") is created by Tenn. Code Ann. § 8-27-201. The Committee is responsible for selecting and overseeing a group insurance plan for state employees.

3. Laurie Lee is the Executive Director of Benefits Administration for the Tennessee Department of Finance and Administration. At all relevant times she was acting in such capacity as the agent and employee of the State. She is sued in her official capacity.

4. Martin Daniel is a member of the Tennessee House of Representatives, representing District 18. Representative Daniel made the Tennessee Public Records Act request that is the subject of his action as a “citizen” of Tennessee. *See* Tenn. Code Ann. § 10-7-503 (records shall “be open for personal inspection by any *citizen* of this state” (emphasis added)). Thus, at all relevant times Representative Daniel was acting as a citizen of Tennessee, not in his representative capacity. As such, he is sued only in his individual capacity.

JURISDICTION AND VENUE

5. This Court has subject-matter jurisdiction pursuant to Tenn. Code Ann. §§ 4-5-225, 29-14-103.

6. Venue is proper in this Court pursuant to Tenn. Code Ann. § 4-5-225. Venue is also proper pursuant to Tenn. Code Ann. § 20-4-104, in that a substantial part of the events and/or omissions giving rise to Optum’s cause of action accrued in Davidson County.

FACTS

7. Optum administers the Employee Assistance Program (“EAP”) and Behavioral Health Organization (“BHO”) services for the State of Tennessee’s Public Sector Health Plans, which provide health insurance benefits to State employees. Optum administers these services pursuant to a contract with the State, the State Insurance Committee, the Local Education Insurance Committee, and the Local Government Insurance Committee (the “EAP/BHO Contract”). A true and correct copy of the EAP/BHO Contract is attached hereto as **Exhibit 1**.

8. During Optum’s administration of EAP and BHO services, and as required by the EAP/BHO Contract, Optum has provided the State with claims data. *See, e.g.*, Ex. 1 § A.21(i).

9. Optum's claims data includes a significant amount of confidential, proprietary, and sensitive information, such as Optum's pricing method and network rates, as well as members' personal health information.

10. It has always been Optum's understanding that the State would treat Optum's claims data as confidential. Until recently, the State has, in accordance with Optum's understanding and expectation, treated the claims data as confidential.

11. However, due to a recent Tennessee Public Records Act request made by Representative Daniel, the State Insurance Committee has announced that it intends to disclose Optum's claims data. Such public disclosure would cause substantial harm to Optum.

12. On October 25, 2019, Representative Martin Daniel sent an email to Laurie Lee requesting production of approximately 60 data fields identified in an attached Excel spreadsheet. A true and correct copy of this email and attached spreadsheet is attached hereto as **Exhibit 2**. The request indicated that Ralph Weber, the CEO of Medibid, a potential Optum competitor, created and sent the data-field spreadsheet to Representative Daniel.

13. In response to Representative Daniel's request, the State produced data relating to billed charges. The State did not produce any data relating to paid charges.

14. On or about November 25, 2019, Representative Daniel made a formal request for the data pursuant to the Tennessee Public Records Act. A true and correct copy of his request, which was submitted via email to Laurie Lee, is included in **Exhibit 2**.

15. Representative Daniel's request encompasses a significant amount of confidential, proprietary, and sensitive information, including Optum's pricing method, network status, line charged amount, line allowed amount, and line insurance paid. *See* Ex. 2. The request also

contains data that could directly or indirectly identify personal health information (e.g., members' date of birth, gender, postal code, and payer number). *See id.*

16. On information and belief, Representative Daniel has been working in conjunction with Medibid, which is a potential competitor of Optum. On information and belief, once Representative Daniel receives the requested information, he will provide it to Medibid for analysis and further dissemination. On information and belief, Medibid has been soliciting the Tennessee legislature to instead use Medibid for services currently provided by Optum.

17. Representative Daniel has also sought data from insurance companies with which the State contracts.

18. After the State Insurance Committee notified Optum of Representative Daniel's Public Records Act request, Optum objected.

19. On December 12, 2019, Optum submitted a petition to Laurie Lee asking that the State refrain from producing any claims data to Representative Daniel. The petition, a true and correct copy of which is attached hereto as **Exhibit 3**, informed the State that producing such confidential, proprietary, and sensitive data would violate numerous state and federal laws.

20. In a letter dated December 13, 2019, Laurie Lee informed Optum that the State Insurance Committee intended to comply in full with Representative Daniel's public records request and produce all requested information on Monday, December 16, no later than 1:00 p.m. The Committee also declined to issue a declaratory order addressing the specific legal objections to the proposed production that were raised in Optum's petition. A true and correct copy of this letter is attached hereto as **Exhibit 4**.

CAUSES OF ACTION

COUNT ONE: DECLARATORY JUDGMENT PURSUANT TO THE TENNESSEE UNIFORM ADMINISTRATIVE PROCEDURES ACT

21. Optum incorporates the numbered paragraphs above as if fully set forth herein.

22. Where a party petitions a state agency for a declaratory order regarding “the validity or applicability of a statute, rule, or order,” and the agency refuses to issue a declaratory order, the party may seek declaratory judgment in this Court. Tenn. Code Ann. § 4-5-225. The Court may issue a declaratory judgment regarding “[t]he legal validity or applicability of [the] statute, rule or order of an agency,” if it finds that “the statute, rule or order, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the complainant.” *Id.*

23. The State Insurance Committee intends to produce the data requested by Representative Daniel based on the Committee’s view that production is required under the Tennessee Public Records Act. Optum seeks a declaratory judgment from this Court that the Tennessee Public Records Act does not permit public disclosure of the requested information.

24. The Tennessee Public Records Act prohibits disclosure of public records where such disclosure would violate “state law.” Tenn. Code Ann. § 10-7-503(a)(2)(A).

25. The Act’s “state law” exception to disclosure “includes statutes, the Tennessee Constitution, the common law, rules of court, and administrative rules and regulations.” *Tennessean v. Metro. Gov’t of Nashville*, 485 S.W.3d 857, 865–66 (Tenn. 2016).

26. Disclosure of Optum’s claims data would violate state law and interfere with or violate Optum’s legal rights and privileges, including but not limited to the following:

a. Tennessee Uniform Trade Secrets Act: Disclosure of the requested data would violate the Tennessee Uniform Trade Secrets Act (“TUTSA”), Tenn. Code Ann. § 47-25-

1701 *et seq.* TUTSA broadly defines trade secrets to include information, including but not limited to financial data, that “[d]erives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use.” Tenn. Code Ann. § 47-25-1702. The requested information falls squarely within this definition. Optum has long treated the data as private and provided it to the State Insurance Committee with the expectation that it would remain private. Disclosure would constitute misappropriation because the data was acquired under circumstances giving rise to a duty to maintain its secrecy.

b. Duty of Confidence: The State owes a common-law duty of confidence to Optum to preserve the confidentiality of the requested data. At the time Optum provided the data to the State, the State knew or had reason to know that the data was intended to be kept in confidence given the parties’ relationship and the context and limited purposes for which the disclosure was made. Moreover, Optum reasonably believed that the State would keep the data confidential. Consequently, public disclosure of the requested confidential data would violate the State’s duty of confidence and/or constitute unfair competition.

c. Unconstitutional Taking: The Tennessee Constitution prohibits the State from taking property “without the consent of its representatives, or without just compensation.” Tenn. Const. Art. I, § 21. Optum has a property interest in the data that the State intends to disclose. Optum has never consented to the data’s public disclosure and Optum has maintained a reasonable expectation that the State would keep the data confidential. Accordingly, disclosing the data without Optum’s consent would constitute an unconstitutional taking of private property.

d. Right to Privacy: The Tennessee Constitution guarantees a right of privacy that is grounded in constitutional liberty protections. *See, e.g.*, Tenn. Const. Art. I, § 8. This right to privacy prevents the State from publicly disclosing the requested information.

e. Disclosure of Personal Health Information: Certain data fields in Representative Daniel’s request, including member numbers, member postal codes, member dates of birth, provider names, diagnoses codes, and procedure codes, could directly or indirectly reveals personal health information (“PHI”) protected from disclosure by state and federal law. HIPAA privacy regulations strictly limit disclosure of PHI. *See* 45 C.F.R. Part 164. Further, Tennessee law prohibits disclosure of “all information provided or received in connection with services applied for, provided under, or regulated under” Title 33 of the Tennessee Code, which governs “Mental Health and Substance Abuse and Intellectual and Developmental Disabilities.” *See* Tenn. Code Ann. § 33-3-103. Because Optum administers plans that provide behavioral health services, the scope of the requested data also includes information about patients who have received mental health or substance abuse treatment. Disclosure of this data would therefore violate Section 33-3-103. Relatedly, 42 C.F.R. Part 2 prohibits disclosure of “any information” that could “identify a patient as having or having had a substance use disorder either directly, by reference to publicly available information, or through verification of such identification by another person,” where such information was obtained by a federally assisted substance abuse program. *See* 42 C.F.R. § 2.12. Since the scope of the request encompasses information about patients who have received substance abuse treatment through federally assisted programs, disclosure would also violate 42 C.F.R. Part 2. Finally, the Public Sector Plans for which Optum administers programs provide insurance benefits to State employees, and the Tennessee Public Records Act contains express protections against public disclosure of State employees’ information. The Act prohibits public

disclosure of “medical records of persons receiving medical treatment, in whole or in part, at the expense of the state,” Tenn. Code. Ann. § 10-7-504(a)(1)(A), as well as disclosure of “[r]esidential information, including the street address, city, state, and zip code, for any state employee,” *id.* § 10-7-504(f)(1)(D)(i).

f. Contract: The State is contractually prohibited from disclosing the requested data. If the data is disclosed and disseminated to Optum’s competitors, Optum will be damaged.

g. Intentional Interference with Business Relations: By disclosing Optum’s claims data, Defendants would intentionally interfere with Optum’s prospective business relations. Optum operates in a specialized field and frequently contracts to administer healthcare benefits for government entities. Defendants are aware of these current and prospective business relations and know that damage to the relationships will occur if the requested data is made accessible to Optum’s competitors. Defendants’ disclosure of Optum’s confidential information over Optum’s express objection would constitute interference by improper means, *i.e.*, misuse of Optum’s confidential information, violation of the Tennessee Uniform Trade Secrets Act, and unfair competition.

COUNT TWO (ALTERNATIVE TO COUNT ONE): DECLARATORY JUDGMENT
PURSUANT TO TENNESSEE’S DECLARATORY JUDGMENT ACT

27. Under Tennessee’s Declaratory Judgment Act, “[a]ny person interested . . . whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status or other legal relations thereunder.” Tenn. Code Ann. § 29-14-103.

28. The Declaratory Judgment Act is “remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and [it] is to be liberally construed and administered.” Tenn. Code Ann. § 29-14-113.

29. There is a live controversy between Optum and Defendants regarding whether Optum’s claims data is subject to disclosure under the Tennessee Public Records Act.

30. Disclosure of Optum’s Confidential Information to Representative Daniel is not permitted under the Tennessee Public Records Act and would violate the laws discussed above in paragraph 25.

COUNT THREE: TENNESSEE UNIFORM TRADE SECRETS ACT

31. Optum incorporates the numbered paragraphs above as if fully set forth herein.

32. Defendants’ threatened disclosure of Optum’s claims data violates TUTSA.

33. The Court may enjoin “threatened misappropriation” of trade secrets under TUTSA. Tenn. Code Ann. § 47-25-1703.

34. Defendants have announced their intention to disclose or use Optum’s trade secrets.

35. The State knew or should have known that it had a duty to maintain the secrecy of Optum’s claims data at the time Optum disclosed the data.

36. Laurie Lee and Representative Daniel know or should know that the State owes a duty to maintain the data’s secrecy.

37. Disclosure of the confidential information will damage Optum.

38. Therefore, Optum asks the Court to enter an injunction enjoining the Defendants from misappropriating Optum’s trade secrets.

COUNT FOUR: INJUNCTIVE RELIEF

39. Optum incorporates the numbered paragraphs above as if fully set forth herein.

40. Optum is entitled to temporary and permanent injunctive relief prohibiting the State Insurance Committee and Laurie Lee, their agents and attorneys, and all persons in active concert or participation with them, from complying with Representative Daniel's open records request or otherwise disclosing, misappropriating, using, or disseminating the information requested by Representative Daniel.

41. Furthermore, Optum is entitled to temporary and permanent injunctive relief prohibiting Representative Daniel, his agents and attorneys, and all persons in active concert or participation with him, from disclosing, misappropriating, using, or disseminating the requested Optum claims data.

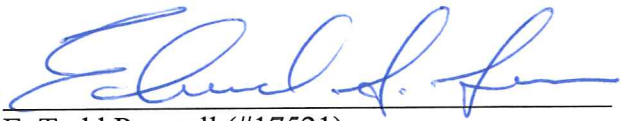
PRAYER FOR RELIEF

WHEREFORE, Optum respectfully requests that the Court:

- A. Enter a declaratory judgment stating that the information requested by Representative Daniel is confidential, proprietary, and a trade secret that may not be disclosed under the Public Records Act.
- B. Enter a restraining order enjoining the State Insurance Committee and Laurie Lee, their agents and attorneys, and all persons in active concert or participation with them, from disclosing, misappropriating, using, or disseminating the information requested by Representative Daniel; and
- C. Enter a temporary injunction and permanent injunction enjoining Defendants, their agents and attorneys, and all persons in active concert or participation with them, from disclosing, misappropriating, using, or disseminating the information requested by Representative Daniel; and
- D. Award such other and further relief as the Court deems just and proper.

Respectfully submitted,

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VERIFICATION

STATE OF Minnesota)
COUNTY OF Hennepin)

I, Kimberley Cox, being duly sworn, make oath and verify that I am
a Vice President of Optum, the plaintiff in this action, that I have read the foregoing Verified
Complaint and have personal knowledge of the factual allegations set forth therein unless
otherwise indicated and that the same are true and correct to the best of my knowledge.

Kimberley Cox
[NAME]
Optum Vice President

Sworn to and subscribed before me on the 13th day of December, 2019.

Notary Public: Jessica L. Phillips
My Commission Expires: 1/31/2023

