

Washington, DC Office

1717 K Street, NW; Suite 900
Washington, DC 20006
(202) 544-8040

Portland, Oregon Office

1050 SW Sixth Avenue, Suite 1100
Portland, Oregon 97204
(503) 535-8040

Facsimile: (866) 544-8040



NEWMAN LAW OFFICES

www.newmanlawoffices.com

Howard A. Newman, Esq. (MBA)*

howard@newmanlawoffices.com

*Licensed in OR, DC, MD and FL

August 30, 2020

VIA FEDEX AND ELECTRONIC MAIL

Centers for Disease Control and Prevention
General Law Division
Attn: Assoc. Gen. Counsel, Michael Goulding
330 Independence Ave., S.W., Room 5362
Washington, DC 20201
(202) 619-0150
F: (202) 619-2922
Michael.Goulding@hhs.gov

With Prejudice¹

EXPEDITED

Centers for Disease Control and Prevention
Office of Acquisition Services
Attn: Contracting Officer, Lauren Peel
2900 Woodcock Blvd
Mail Stop TCU4
Atlanta, GA 30341
(770) 488-2649
IJT9@cdc.gov

Deloitte Consulting LLP
Attn: General Counsel
Benton J. Campbell
30 Rockefeller Plaza
41st Floor
New York, NY 10112
(212) 492-4000
becampbell@deloitte.com

Deloitte Consulting LLP
Attn: Sabine Awad
1919 N Lynn Street
Arlington, VA 22209-1742
///
///
///
saawad@deloitte.com

U.S. Department of Justice
Commercial Litigation Branch
1100 L Street, NW, 8th Floor
Washington, DC 20530
(202) 514-2000
nationalcourts.bidprotest@usdoj.gov

¹ Footnote 15, which is FOR SETTLEMENT PURPOSES ONLY, non-prejudicial, and cabined within FRE 408 discussions or any analog, is subsumed within this confidential letter.

Various Parties

Demand; Legal Hold and Preservation Notice; Cease and Desist; Pre-Suit Notices

August 30, 2020

RE: ***Demand; Legal Hold and Preservation Notice; Cease and Desist; Pre-Suit Notices***

File No. 05M-82P.2

Dear Various Representatives:

This firm represents Multi-State Partnership for Prevention, LLC, a minority-owned business (“***MSPP***”). Its only principal, Tiffany Tate, an African-American, presented to the Centers for Disease Control and Prevention (“***CDC***”), and at its direction, Deloitte Consulting LLP (“***Deloitte***”), ***MSPP***’s intellectual property. ***CDC*** and/or ***Deloitte*** have misappropriated, copied, and stolen ***MSPP***’s intellectual property (“***IP***”). Indeed, we have knowledge of documentary evidence betraying such tortious conduct.

It appears that as a result of a scheme, ***Deloitte*** was improperly awarded a contract to build a mass vaccination tool based on ***MSPP***’s IP even though its software was already commercially available and known to ***CDC***. Furthermore, it is clear that ***CDC*** and ***Deloitte***, as the case may be, have exposure to, *inter alia*, patent infringement, misappropriation, other torts, and violations of key federal procurement statutes. These acts have: (i) substantially interfered with ***MSPP***’s ability to conduct commerce; (ii) derailed ***MSPP***’s plans for engaging under-served youths in social enterprise; and (iii) deprived ***MSPP*** of the opportunity to meaningfully contribute to a public health crisis that disproportionately is impacting, *inter alia*, Ms. Tate’s community. Damages are clear and substantial: at least \$15,000,000.²

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## **Background**

On March 13, 2020, Ms. Tate alerted ***CDC*** of a pending release of a pandemic preparedness module, i.e., ***PrepMod***, to respond to the evolving pandemic caused by COVID-19. ***CDC***, having knowledge of Ms. Tate’s earlier inventions, requested permission to share details about ***PrepMod***’s impending release. She concurred.

As part of information-gathering for a ***CDC***-commissioned report, on or around April 21, 2020, Ms. Tate introduced to the American Immunization Registries Association (“***AIRA***”) and ***CDC*** at least ***PrepMod***, a software that would help automate key aspects of delivering mass vaccination in various clinical and non-clinical settings in a pandemic response.<sup>3</sup> On April 27, 2020, ***MSPP*** again presented ***PrepMod*** via at least a

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<sup>2</sup> In one of many examples, the State of Florida had represented to ***MSPP*** that it was strongly considering purchasing ***MSPP***’s IP known as ***PrepMod*** (“***PrepMod***”). Ms. Tate learned on August 28, 2020, from a third party no less, that Florida had declared publicly during a national conference call attended by immunization program managers from across the country that Florida would have purchased ***PrepMod*** but decided to use ***Deloitte***’s version since “it does everything that ***PrepMod*** does.” The Florida contract was worth ~\$1,200,000.

<sup>3</sup> One or more patent applications cover ***PrepMod***,<sup>SM</sup> whose trademark application is also pending.

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full demonstration to CDC's staff, including the Immunization Information Systems ("IIS") Director where Deloitte was present and introduced as CDC's consultants.<sup>4</sup> CDC had multiply contacted MSPP requesting a demonstration.<sup>5</sup> Almost immediately after the presentation ended, the IIS Director, Ms. Gibbs-Scharf, inquired about cost and reiterated a verbal request to meet with MSPP's technical team. The next day, another request was made to identify the cost, which MSPP eventually provided.

On May 4, 2020, in response to CDC's request during the April 27 meeting, MSPP sent to Ms. Gibbs-Scharf and other CDC staff a slide presentation and screenshots<sup>6</sup> of PrepMod with detailed explanations of current and planned features (and an overview of a social enterprise that would result from widespread sale and use of PrepMod). On May 5, 2020, and again the next day, MSPP and its agents, including the chief engineer for PrepMod, conferred with CDC.<sup>7</sup> On said date, CDC confirmed that it did not have a workflow for handling vaccine distribution. However, through this meeting, CDC and Deloitte now obtained technical specifications of PrepMod.

During the many meetings, presentations, and conferences, agents of CDC and Deloitte were repeatedly apprised that MSPP's intellectual property was secured, confidential, and proprietary. MSPP also made it clear to CDC (with Deloitte present) that MSPP could expeditiously scale and execute a national roll-out parlaying existing partnerships both with a national public health organization and a national software firm with extensive experience with government agencies. It appears May 6, 2020 marked the last time the parties substantively communicated about PrepMod.

On May 11, 2020, less than one week after representing that it had no workflow, CDC introduced a "draft" workflow and announced its intention to build a "mass vaccination app," which eventually would be termed the Vaccine Administration Management Systems ("VAMS"). Said workflow has the identical structure, mirrors the functionality, and duplicates the same features as PrepMod. It is believed that CDC did not author said draft.

On May 22, 2020, MSPP announced to CDC that MSPP added to PrepMod a new feature, one that also eventually found its way into VAMS. Importantly, CDC did not respond to Ms. Tate's outreach. Contrary to custom, CDC did not inform MSPP of a

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<sup>4</sup> Some of the individuals attending included (where some last names may not be known): from the CDC, Ms. Gibbs-Scharf, Anita Patel, Cindy Weinbam, Stuart M.; from Deloitte, Dimitrious Koustsonanos, Millie Malai; and individuals identified as Janet and John.

<sup>5</sup> MSPP owned ReadConsent ("RC") and ClinicWizard ("CW"), companion software that preceded PrepMod. Literally minutes after a CDC Branch Director, Lynn Gibbs-Scharf, learned from a regional director the existence of RC and/or CW, award-winning software used in multiple states, Ms. Gibbs-Scharf obtained Ms. Tate's contact information and contacted her with urgency.

<sup>6</sup> The materials were all marked "Confidential and Proprietary," continuing oral and written notice from previous and future presentations.

<sup>7</sup> Some of the individuals attending the IT sessions included Ms. Gibbs-Scharf (CDC) and unnamed technical managers.

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solicitation that had commenced on May 19, 2020,<sup>8</sup> only three days prior to Ms. Tate's communication, or prior, that a solicitation was even contemplated. In fact, during the seven-day open bid period, CDC did not disclose on regular conference calls to national players in the immunization space of the open bid. Rather, CDC publicly was stating in various forums that: (i) it was going to be providing a mass vaccination app; (ii) a "vendor" already had been identified, and (iii) CDC would release the name "soon." Some of said national players had concluded that CDC was preparing to purchase PrepMod despite their confusion by CDC's atypical secrecy.

On May 27, 2020, CDC awarded Deloitte, the sole bidder and privy to knowledge of the RFP prior to solicitation, a one-year contract for \$15,891,816.74, essentially to reproduce PrepMod.<sup>9</sup> This amount was ~\$0.6 million more than what MSPP offered to sell CDC for a national license. MSPP's offer included a lifetime license whereas VAMS was intended only for use for the first two phases of the vaccine response, estimated at approximately nine months.

On June 26, 2020, Deloitte, incredulously, tried to hire Ms. Tate to work on the very software and project that she had already developed and created.<sup>10</sup> On August 5, 2020, Operation Warp Speed ("**OWS**"),<sup>11</sup> requested what was originally scheduled as a thirty-minute meeting that morphed into a one and a half hour meeting with MSPP about technology it recently had developed to further assist in the pandemic. During that meeting, MSPP presented for the first time COVIDReadi, patent-pending technology that covers a campaign with companion technology that automates key aspects of preparing any nation, including the United States, for delivery of COVID-19 vaccine. OWS invited CDC to this meeting.

This letter, *en toto*, implicates not just reckless but intentional and bad faith conduct that also manifested as a bias to award Deloitte the Award. Such resulted in MSPP being prejudiced. A reader cannot reconcile with current law how, for example, in April, 2020, the CDC-commissioned report by AIRA found that MSPP had the only functioning and fully-developed bi-directional mass vaccination application on the market. Yet, Deloitte somehow obtained the award for the development of an application that mirrors PrepMod, albeit with many fewer features licensed for a much shorter time frame. And to this day, Deloitte (and CDC) still do not have a finished product.<sup>12</sup>

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<sup>8</sup> RFP ID: 75D30120R67989.

<sup>9</sup> Award ID: 75D30120C08239.

<sup>10</sup> Conveniently, Deloitte demanded that Ms. Tate execute a document that contained, *inter alia*, a release.

<sup>11</sup> Some of the attendees included Christopher Sharpstein, Robert Mikesh, Nicholas Gauvin, and Anita Patel.

<sup>12</sup> *Cf. The CDC Waited Its Entire Existence for this Moment: What Went Wrong?* available at <https://www.nytimes.com/2020/06/03/us/cdc-coronavirus.html>.



**Demand for Legal Hold**

MSPP directs CDC and Deloitte, any of their respective agents and employee, and any related entity, association or otherwise (collectively, “*Infringers*”), to retain and to preserve, *inter alia*, any and all (“*any*” or “*all*”) documents and information, including by way of non-limiting example (“*include*” or “*including*”) electronically stored information (“*ESI*”),<sup>13</sup> from since at least January 1, 2020, concerning MSPP, Maryland Partnership for Prevention, Inc., PrepMod, VAMS, the RFP and Award cited in Footnote 9 and any natural person identified in the body of this letter (“*Subject Matter*”).<sup>14</sup> Such retained and preserved documents and information will cover and include: any draft or final version thereof, including those of any market research pursuant to at least 10 U.S. Code §2377, any justification and approval (J&A) concerning the Award; any note or communication in various forms (e.g., emails, voicemail messages, minutes, etc.) concerning the Subject Matter, which include all recorded meetings and calls, teleconference, video, or otherwise, that included, in any permutation, Nancy Messonier, Melinda Wharton, Ms. Gibbs-Scharf, Brock LaMont from, with greater specificity, at least April 19, 2020 to May 31, 2020; and (for thoroughness), any communication (which necessarily includes any text) concerning Brock LaMont.

**Cease and Desist and Pre-Filing Notices**

MSPP demands that the Infringers cease and desist from any further development of VAMS, any related software, and cancel any demonstrations, public or otherwise, including ones set for September 1 and 2, 2020. MSPP hopes that the parties can negotiate at least a ten (10) day stay of performance commencing August 31, 2020. MSPP has a remedy that involves implementation of technology that urgently is needed for the COVID-19 pandemic response and promises to curtail the impact of the virus on underserved and minority populations. *See infra* note 15. If a voluntary stay cannot be obtained, by way of this letter, MSPP places at least the Department of Justice (“*DOJ*”) and the Infringers on notice of, *inter alia*, MSPP’s intent to at least file for a temporary restraining order and injunctive relief in the Court of Federal Claims on or around August 31, 2020. Additionally, this demand shall also perfect notice pursuant to the Federal Tort Claims Act.

As a coda, MSPP requests that CDC identify if it considers Deloitte an agent thereto and if such status has changed at any time from April, 2020 until the present.

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<sup>13</sup> The terms “document” and “electronically stored information” shall have the same meaning as those found in Rule 34(a) of the Federal Rules of Civil Procedure.

<sup>14</sup> Additional individuals include: from CDC, Cindy Weinbaum, Tara Vogt, Stuart Myerberg, Melinda Wharton, and LaTreace Harris; from Deloitte, Sabine Awad, and the person associated with the email address [Jstinn@deloitte.com](mailto:Jstinn@deloitte.com).

Various Parties

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August 30, 2020

Finally, please be advised that this letter does not include a comprehensive statement of all rights, directives, claims or remedies that any client of mine may have in this matter, and nothing in this letter shall be construed or interpreted as prejudicing, affecting or otherwise impairing such rights, directives, claims or remedies, all of which are hereby expressly reserved and retained.<sup>15</sup>

Very truly yours,

Howard A. Newman  
Registered Patent Attorney

Attachment: Bid Protest Pre-Filing Notice

xc: Client (via email)

[CFC\\_Bidprotests@cfc.uscourts.gov](mailto:CFC_Bidprotests@cfc.uscourts.gov) (Bid Protest Only)

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<sup>15</sup> This time period, especially prior to any filing, represents for all of the parties an exceptional opportunity, a window that will close quickly. MSPP will entertain, *inter alia*, a delay in any filing and an offer for the purchase of a national lifetime license for COVIDReadi, patent pending software that, if accepted, will most likely allow MSPP to discontinue any further action against the Infringers. If the Parties cannot come to any agreement, then MSPP intends to file a multi-count complaint in at least the Court of Federal Claims and the CDC will need to begin its investigation pursuant to the FTCA, conduct which will invariably lead to suit.