

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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ROBERT BENTKOWSKI, KAREN ENGEL, :
MICHELLE FEINMAN, NANCY LOSINNO, JOHN :
MIHOVICS, KAREN MILLER, ERICA RHINE, :
ELLEN RIESER, and BEVERLY ZIMMERMAN, on :
behalf of themselves and all others similarly situated, and : Index No. 154962/2023
THE NEW YORK CITY ORGANIZATION OF :
PUBLIC SERVICE RETIREES, INC. : (Hon. Lyle E. Frank)

Petitioners-Plaintiffs, :

v. :

THE CITY OF NEW YORK; ERIC ADAMS, Mayor of :
the City of New York; THE CITY OF NEW YORK :
OFFICE OF LABOR RELATIONS; RENEE :
CAMPION, Commissioner of the Office of Labor :
Relations; THE NEW YORK CITY DEPARTMENT OF :
EDUCATION (a/k/a THE BOARD OF EDUCATION :
OF THE CITY SCHOOL DISTRICT OF THE CITY OF :
NEW YORK); and DAVID C. BANKS, Chancellor of :
the New York City Department of Education, :

Respondents-Defendants. :

**[PROPOSED]
VERIFIED ANSWER AND
AFFIRMATIVE
DEFENSES**

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Proposed Intervenor-Respondent Aetna Life Insurance Company (“Aetna”), by and through its attorneys Alston & Bird, hereby answers the allegations in the Verified Article 78 Petition and Complaint (“Verified Petition”) of Petitioners as set forth below. Aetna denies each and every allegation of the Verified Petition not expressly admitted.¹ Aetna further expressly incorporates by reference the accompanying Memorandum of Law, the Affirmation of Karl Geercken, Esq., dated June 13, 2023, the exhibits attached thereto, and the Affidavits of Richard

¹ For ease of reference, Aetna has included the section headings and defined terms used in the Verified Petition. To the extent that the allegations contained in a section heading may be deemed to require a response, they are denied.

A. Frommeyer; Stephen Fisher; Sarah Grantham; Catharine Moffitt, M.D.; Melissa Price; and Michael Salve, PhD.

NATURE OF ACTION

1. This paragraph states legal conclusions and a summary of the allegations and claims asserted in the Verified Petition as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

2. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

3. Aetna denies knowledge or information as to characterizations concerning Medicare Supplemental insurance as such characterizations are highly individualized. Aetna admits the remaining allegations in this paragraph.

4. Aetna admits the allegations in this paragraph.

5. Aetna admits the allegations in this paragraph.

6. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced statute and denies any allegations in this paragraph that are inconsistent with it. Aetna further denies knowledge or information sufficient to form a belief about the City's purported statements to the Retirees.

7. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced statute and the New York Constitution and denies any allegations in this paragraph that are inconsistent with them.

8. Aetna denies the allegations in this paragraph.

9. Aetna denies knowledge or information sufficient to form a belief about the

allegations in this paragraph.

10. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

11. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

12. Aetna denies the allegations in this paragraph.

13. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the decision in *N.Y.C. Organization of Public Service Retirees, Inc. et al. v. Renee Champion et al.*, Index No. 158815/2021, [NYSCEF Doc. No. 216](#) and denies any allegations in this paragraph that are inconsistent with it.

14. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced New York City Administrative Code § 12-126 and the decision in *N.Y.C. Organization of Public Service Retirees, Inc. et al. v. Renee Champion et al.*, Index No. 158815/2021, [NYSCEF Doc. No. 216](#) and denies any allegations in this paragraph that are inconsistent with them.

15. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the decision in *N.Y.C. Organization of Public Service Retirees, Inc. et al. v. Renee Champion et al.*, Index No. 158815/2021, [NYSCEF Doc. No. 216](#) and denies any allegations in this paragraph that are inconsistent with it.

16. This paragraph states legal conclusions as to which no response is required. To the

extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

17. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

18. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the decision in *Margaretann Bianculli et al. v. City of New York Office of Labor Relations et al.*, Index No. 160234/2022, [NYSCEF Doc. No. 60](#) and in Case No. 2023-00232, [NYSCEF Doc. No. 18](#) and denies any allegations in this paragraph that are inconsistent with them.

19. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

20. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the refenced statements by the City and denies any allegations in this paragraph that are inconsistent with them. Aetna admits that certain retirees will have the option of enrolling in HIP VIP and that Retirees who do not wish to be automatically enrolled in the Aetna MAP will have from May 1 until June 30, 2023 to opt out. Aetna denies the remaining allegations in this paragraph.

21. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

22. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna denies

knowledge or information sufficient to form a belief about the allegations in this paragraph.

23. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced statute and the New York Constitution and denies any allegations in this paragraph that are inconsistent with them.

24. This paragraph states legal conclusions and a summary of the allegations and claims asserted in the Verified Petition as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

25. This paragraph states legal conclusions and a summary of the allegations and claims asserted in the Verified Petition as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

26. This paragraph states legal conclusions and a summary of the allegations and claims asserted in the Verified Petition as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

THE PARTIES

A. Petitioners-Plaintiffs

27. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

28. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

29. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

30. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

31. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

32. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

33. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

34. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

35. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

36. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

37. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

38. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

39. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

40. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

41. The last sentence of this paragraph states legal conclusions as to which no response

is required. To the extent it requires a response, it is denied. Further, Aetna denies knowledge or information sufficient to form a belief about the remaining allegations in this paragraph.

42. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

43. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

44. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

45. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

46. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

47. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

48. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

49. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

50. The first sentence of this paragraph states legal conclusions as to which no response is required. To the extent it requires a response, it is denied. Further, Aetna denies knowledge or information sufficient to form a belief about the remaining allegations in this paragraph.

51. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

52. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

53. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

54. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

55. The first sentence of this paragraph states legal conclusions as to which no response is required. To the extent it requires a response, it is denied. Further, Aetna denies knowledge or information sufficient to form a belief about the remaining allegations in this paragraph.

56. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

57. Aetna admits that UF Health Shands Hospital is currently out-of-network with the Aetna MAP, but states that Aetna has come to an agreement in principle with UF Health Shands to participate in the Aetna MAP network for the City. Aetna denies knowledge or information sufficient to form a belief about the remaining allegations in this paragraph.

58. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

59. The first sentence of this paragraph states legal conclusions as to which no response is required. To the extent it requires a response, it is denied. Further, Aetna denies knowledge or information sufficient to form a belief about the remaining allegations in this paragraph.

60. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

61. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

62. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

63. The first sentence of this paragraph states legal conclusions as to which no response is required. To the extent it requires a response, it is denied. Further, Aetna denies knowledge or information sufficient to form a belief about the remaining allegations in this paragraph.

64. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

65. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

66. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

67. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

68. The first and penultimate sentences of this paragraph state legal conclusions as to which no response is required. To the extent those allegations require a response, they are denied. Aetna denies the allegation that NYU Langone will not accept the Aetna MAP or were unsure what the plan was, and whether they would accept it. Further, Aetna denies knowledge or

information sufficient to form a belief about the remaining allegations in this paragraph.

69. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

70. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

71. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

72. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

73. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

74. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

75. The first sentence of this paragraph states legal conclusions as to which no response is required. To the extent it requires a response, it is denied. Further, Aetna denies knowledge or information sufficient to form a belief about the remaining allegations in this paragraph.

76. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

77. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

78. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

79. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

80. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

81. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

82. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

83. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

84. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

85. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

86. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

B. Respondents-Defendants

87. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna admits that the City is the Retirees' former employer and denies the remainder of the allegations in this paragraph.

88. Aetna admits that Eric Adams is the Mayor of New York City and serves as the Chief Executive of the City of New York. Aetna denies knowledge or information sufficient to

form a belief about the remainder of the allegations in this paragraph.

89. Aetna admits the allegations in this paragraph.

90. Aetna admits the allegations in this paragraph.

91. Aetna admits the allegations in this paragraph.

92. Aetna admits the allegations in this paragraph.

JURISDICTION

93. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

94. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

95. Aetna denies knowledge or information sufficient to form a belief about the remainder of the allegations in this paragraph.

96. Aetna denies knowledge or information sufficient to form a belief about the remainder of the allegations in this paragraph.

97. Aetna denies knowledge or information sufficient to form a belief about the remainder of the allegations in this paragraph.

98. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced General Business Law and denies any allegations in this paragraph that are inconsistent with it.

99. This paragraph states legal conclusions as to which no response is required. To the

extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

VENUE

100. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

ARTICLE 78

101. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced CPLR [§ 7803](#) and denies any allegations in this paragraph that are inconsistent with it.

102. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced CPLR [§ 7806](#) and denies any allegations in this paragraph that are inconsistent with it.

FACTUAL BACKGROUND

103. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

104. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

105. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

106. Aetna denies knowledge or information sufficient to form a belief about the

remainder of the allegations in this paragraph.

107. Aetna denies knowledge or information sufficient to form a belief about the remainder of the allegations in this paragraph.

108. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna denies knowledge or information sufficient to form a belief about the remainder of the allegations in this paragraph.

I. Background on Medicare and Medicare Advantage

A. How Medicare Works

109. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

110. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

111. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

112. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

113. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations

are denied.

114. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna admits that Medicare “Supplemental” or “Medigap” insurance plans are offered by some insurance companies to provide coverage for the remaining 20%. Aetna denies the remaining allegations in this paragraph.

115. Aetna respectfully refers the Court to the referenced statements by the U.S. government and denies any allegations in this paragraph that are inconsistent with them.

116. Aetna denies knowledge or information sufficient to form a belief about the remainder of the allegations in this paragraph.

117. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

118. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

119. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

120. Aetna admits the allegations in this paragraph.

121. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

122. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

123. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

124. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

125. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

B. How Medicare Advantage Works

126. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced statutes and denies any allegations that are inconsistent with them.

127. Aetna denies the allegations in this paragraph.

128. Aetna admits the allegations in this paragraph.

129. Aetna admits the allegations in this paragraph.

130. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

131. Aetna admits that traditional Medicare operates on a fee-for-service basis. Aetna denies knowledge or information sufficient to form a belief about the remaining allegations in this paragraph.

132. Aetna denies the allegations in this paragraph.

133. Aetna denies the allegations in this paragraph.

134. Aetna denies that traditional Medicare does not impose prior authorizations. Aetna denies knowledge or information sufficient to form a belief about the remaining allegations in this paragraph.

135. Aetna denies the allegations in this paragraph.

136. Aetna denies the allegations in this paragraph as to Medicare Advantage plans it administers and otherwise denies knowledge or information sufficient to form a belief about the remaining allegations in this paragraph.

137. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

138. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced U.S. Department of Health and Human Services report and denies any allegations in this paragraph that are inconsistent with it, including Petitioners' characterizations of same.

139. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph. Aetna also respectfully refers the Court to the referenced U.S. Department of Health and Human Services report and denies any allegations in this paragraph that are inconsistent with it, including Petitioners' characterizations of same.

140. Aetna denies the allegations in this paragraph as to Medicare Advantage plans it administers and otherwise denies knowledge or information sufficient to form a belief about the remaining allegations in this paragraph.

141. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

142. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

C. Aetna is One of the Worst Offenders

143. Aetna denies the allegations in this paragraph.

144. Aetna denies the allegations in this paragraph.

145. Aetna denies the allegations in this paragraph and respectfully refers the Court to the actual proceedings referenced therein.

II. History of the City Attempting to Bypass its Legal Obligations

A. The City Tries to Make Retirees Pay for their Medicare Supplemental Insurance

146. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

147. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

148. Aetna admits the allegations in this paragraph.

149. Aetna admits that through a negotiated acquisition the City selected the proposal submitted by the Alliance over Aetna. Aetna denies that its bid was rejected.

150. Aetna respectfully refers the Court to the referenced statements on the City's website and denies any allegations in this paragraph that are inconsistent with them.

151. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced statements on the City's website and denies any allegations in this paragraph that are inconsistent with them.

152. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the Petition in *N.Y.C. Organization of Public Service Retirees, Inc. et al. v.*

Renee Campion et al., Index No. 158815/2021, [NYSCEF Doc. No. 1](#) and denies any allegations in this paragraph that are inconsistent with it.

153. Aetna admits that it filed suit under *Aetna Life Insurance Company v. Renee Campion et al.*, Index No. 158216/2021, [NYSCEF Doc. No. 1](#) and denies any allegations in this paragraph that are inconsistent with it.

154. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the decision in *N.Y.C. Organization of Public Service Retirees, Inc. et al. v. Renee Campion et al.*, Index No. 158815/2021, NYSCEF Doc. Nos. [112](#), [113](#), & [114](#) and denies any allegations in this paragraph that are inconsistent with it.

155. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the decision in *N.Y.C. Organization of Public Service Retirees, Inc. et al. v. Renee Campion et al.*, Index No. 158815/2021, [NYSCEF Doc. No. 216](#) and denies any allegations in this paragraph that are inconsistent with it.

156. Aetna admits that the City filed an appeal in *N.Y.C. Organization of Public Service Retirees, Inc. et al. v. Renee Campion et al.*, Case No. 2022-01006, [NYSCEF Doc. No. 1](#) and denies any allegations in this paragraph that are inconsistent with it.

157. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the decision in *N.Y.C. Organization of Public Service Retirees, Inc. et al. v. Renee Campion et al.*, Case No. 2022-01006, [NYSCEF Doc. No. 40](#) and denies any allegations in this paragraph that are inconsistent with it.

158. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

B. The City Imposes Co-Pays

159. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

160. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

161. Aetna admits that the Retirees filed suit under *Margaretann Bianculli et al. v. City of New York Office of Labor Relations et al.*, Index No. 160234/2022, [NYSCEF Doc. No. 1](#) and denies any allegations in this paragraph that are inconsistent with it.

162. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the decisions in *Margaretann Bianculli et al. v. City of New York Office of Labor Relations et al.*, Index No. 160234/2022, Index No. 160234/2022, [NYSCEF Doc. No. 60](#) and in Case No. 2023-00232, [NYSCEF Doc. No. 18](#) denies any allegations in this paragraph that are inconsistent with them.

C. The City's Contract with Aetna

163. Aetna admits the allegations in this paragraph.

164. Aetna admits the allegations in this paragraph.

165. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

166. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

167. Aetna admits the allegations in this paragraph.

168. Aetna admits that the initial term of the contract is, at least, five years.

169. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

170. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

171. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

D. Countless Providers Will Not Accept the Aetna MAP

172. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

173. Aetna denies that the Aetna MAP has a limited network of medical providers. Aetna also respectfully refers the Court to the terms of the contract and denies any allegations in this paragraph that are inconsistent with them.

174. Aetna respectfully refers the Court to the terms of the Aetna MAP and denies any allegations in this paragraph that are inconsistent with them, including Petitioners' characterizations of same.

175. Aetna denies the allegations in this paragraph.

176. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

177. This paragraph states legal conclusions as to which no response is required. To the

extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

E. Retirees Bear the Burden of Payment

178. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the terms of the Aetna MAP and denies any allegations in this paragraph that are inconsistent with them, including Petitioners' characterizations of same.

179. Aetna denies the allegations in this paragraph.

180. Aetna denies knowledge or information sufficient to form a belief about the Retirees' ability to pay for their medical care. Aetna respectfully refers the Court to the terms of the Aetna MAP and denies any allegations in this paragraph that are inconsistent with them, including Petitioners' characterizations of same.

F. The Aetna MAP Requires Prior Authorization

181. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the terms of the Aetna MAP and denies any allegations in this paragraph that are inconsistent with them, including Petitioners' characterizations of same.

182. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the terms of the Aetna MAP and denies any allegations in this paragraph that are inconsistent with them, including Petitioners' characterizations of same.

183. Aetna denies the allegations in this paragraph.

184. Aetna denies the allegations in this paragraph.

185. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the terms of the Aetna MAP and denies any allegations in this paragraph that are inconsistent with them, including Petitioners' characterizations of same.

186. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the terms of the Aetna MAP and denies any allegations in this paragraph that are inconsistent with them, including Petitioners' characterizations of same. Aetna denies knowledge or information sufficient to form a belief about doctors' willingness to seek prior authorization.

187. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the terms of the Aetna MAP and denies any allegations in this paragraph that are inconsistent with them, including Petitioners' characterizations of same.

G. The Aetna MAP Imposes Co-Pays

188. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced decision in [*Bianculli v. City of New York Office of Labor Relations*, No. 160234/2022 \(Sup. Ct. N.Y. Cnty. Jan. 11, 2023\)](#) and the terms of the Aetna MAP and denies any allegations in this paragraph that are inconsistent with them, including Petitioners' characterizations of same.

189. Aetna denies the allegations in this paragraph.

190. Aetna denies knowledge or information sufficient to form a belief about the

allegations in this paragraph.

191. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the terms of the Aetna MAP and denies any allegations in this paragraph that are inconsistent with them, including Petitioners' characterizations of same. Aetna denies knowledge or information sufficient to form a belief about the allegations regarding the Senior Care Drug Rider.

192. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

193. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

H. Opting Out is Not a Viable Option

194. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna denies the allegations in this paragraph.

195. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

196. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

197. Aetna denies knowledge or information sufficient to form a belief about the

allegations in this paragraph.

198. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

199. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

200. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

201. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

202. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

203. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

204. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

205. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

206. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

I. Retirees Lack Adequate and Accurate Information

207. Aetna denies the allegations in this paragraph.

208. Aetna denies the allegations in this paragraph.

209. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

210. Aetna denies the allegations in this paragraph.

211. Aetna respectfully refers the Court to the referenced Aetna MAP materials and denies any allegations in this paragraph that are inconsistent with them, including Petitioners' characterizations of same.

212. Aetna respectfully refers the Court to the referenced Aetna MAP materials and denies any allegations in this paragraph that are inconsistent with them, including Petitioners' characterizations of same. Aetna denies knowledge or information sufficient to form a belief about the remaining allegations in this paragraph.

213. Aetna denies the allegations in this paragraph.

214. Aetna respectfully refers the Court to the referenced Aetna MAP materials and denies any allegations in this paragraph that are inconsistent with them, including Petitioners' characterizations of same.

215. Aetna respectfully refers the Court to the referenced Aetna MAP materials and denies any allegations in this paragraph that are inconsistent with them, including Petitioners' characterizations of same. Aetna denies the remaining allegations in this paragraph.

216. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced Aetna MAP materials and denies any allegations in this paragraph that are inconsistent with them, including Petitioners' characterizations of same. Aetna denies the remaining allegations in this paragraph.

217. Aetna denies the allegations in this paragraph and respectfully refers the Court to the referenced Aetna MAP materials and denies any allegations in this paragraph that are inconsistent with them, including Petitioners' characterizations of same.

J. The City Has Made Opting Out Confusing and Extremely Challenging

218. Aetna denies the allegations in this paragraph.

219. Aetna respectfully refers the Court to the referenced Aetna MAP materials and denies any allegations in this paragraph that are inconsistent with them, including Petitioners' characterizations of same.

220. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

221. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

222. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced OLR webpage and denies any allegations in this paragraph that are inconsistent with it. Aetna denies the remaining allegations in this paragraph.

223. Aetna denies the allegations in this paragraph.

224. Aetna respectfully refers the Court to the referenced OLR webpage and denies any

allegations in this paragraph that are inconsistent with it. Aetna denies the remaining allegations in this paragraph.

225. Aetna respectfully refers the Court to the referenced OLR webpage and denies any allegations in this paragraph that are inconsistent with it. Aetna denies the remaining allegations in this paragraph.

226. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

III. The Statutory Scheme and the City's Promises

A. A Choice of City-Funded Medicare Supplemental Insurance is Guaranteed by Statute

227. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced statute and denies any allegations in this paragraph that are inconsistent with it.

228. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced Board of Estimate resolution and denies any allegations in this paragraph that are inconsistent with it.

229. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

230. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced New York City Administrative Code and denies any allegations in this paragraph that are inconsistent with it.

231. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced New York City Administrative Code and denies any allegations in this paragraph that are inconsistent with it.

232. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced New York City Administrative Code and denies any allegations in this paragraph that are inconsistent with it.

233. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced New York City Administrative Code and denies any allegations in this paragraph that are inconsistent with it.

234. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced New York City Administrative Code, Local Law, and General City Law and denies any allegations in this paragraph that are inconsistent with them.

235. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

236. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced 1965 resolution and denies any allegations in this paragraph that are inconsistent with it.

237. This paragraph states legal conclusions as to which no response is required. To the

extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced New York City Administrative Code and denies any allegations in this paragraph that are inconsistent with it.

238. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

239. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced New York State General City Law and denies any allegations in this paragraph that are inconsistent with it.

240. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced New York City Administrative Code and denies any allegations in this paragraph that are inconsistent with it.

241. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

242. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

243. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

B. For Over 50 Years, the City Has Promised City-Funded Healthcare for Medicare-Eligible Retirees Through a Combination of Medicare Plus a Choice of Medicare Supplemental Plans

244. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

245. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

246. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

247. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

248. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

249. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

250. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

251. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

252. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

253. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

254. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

255. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

256. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

257. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

258. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

259. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

260. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

261. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

CLASS ACTION ALLEGATIONS

262. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

263. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

264. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

265. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

266. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

267. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

FIRST CAUSE OF ACTION

Promissory Estoppel With Respect to All Respondents On Behalf of Petitioners, Individually, and the Class

268. Aetna responds to this Paragraph by realleging and incorporating by reference its responses to Paragraphs 1 through 267 as if fully set forth herein.

269. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

270. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

271. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

272. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

273. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

274. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

275. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

276. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

277. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

278. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

279. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

280. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

281. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

282. Aetna denies the allegations in this paragraph.

SECOND CAUSE OF ACTION

**Violation of the Moratorium Law
With Respect to All Respondents
On Behalf of Petitioners, Individually, and the Class**

283. Aetna responds to this Paragraph by realleging and incorporating by reference its responses to Paragraphs 1 through 282 as if fully set forth herein.

284. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced Moratorium Law and denies allegations in this paragraph that are inconsistent with it. Aetna denies knowledge or information sufficient to form a belief about the remaining allegations in this paragraph.

285. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced Moratorium Law and denies allegations in this paragraph that are inconsistent with it.

286. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

287. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced legislative history of the Moratorium Law and denies allegations in this paragraph that are inconsistent with it.

288. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced legislative history of the Moratorium Law and denies allegations

in this paragraph that are inconsistent with it.

289. Aetna admits that the City will pay \$15 per Retiree per month for the Aetna MAP and denies knowledge or information sufficient to form a belief about the remaining allegations in this paragraph.

290. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

291. Aetna denies that Respondents have diminished the health insurance benefits of Retirees and denies knowledge or information sufficient to form a belief about the remainder of the allegations in this paragraph.

292. Aetna denies that Respondents have diminished the health insurance benefits of Retirees and denies knowledge or information sufficient to form a belief about the remainder of the allegations in this paragraph.

293. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna admits that the Aetna MAP has co-pays of \$15 and denies the remaining allegations in this paragraph, including Petitioners' characterizations of the Aetna MAP co-pays.

294. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

295. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

296. This paragraph states legal conclusions as to which no response is required. To the

extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

297. Aetna denies that Respondents have diminished the health insurance benefits of Retirees and denies knowledge or information sufficient to form a belief about the remainder of the allegations in this paragraph.

298. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

299. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna admits that the Aetna MAP has some prior authorizations and denies that traditional Medicare has no prior authorizations.

300. Aetna denies that Respondents have diminished the health insurance benefits of Retirees and denies knowledge or information sufficient to form a belief about the remainder of the allegations in this paragraph.

301. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

302. Aetna denies that Respondents have diminished the health insurance benefits of Retirees and denies knowledge or information sufficient to form a belief about the remainder of the allegations in this paragraph.

303. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations

are denied.

304. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

THIRD CAUSE OF ACTION

Dangerous Disruption in Life-Saving Treatment in Violation of CPLR 7803(3) With Respect to All Respondents On Behalf of Petitioners, Individually, and the Class

305. Aetna responds to this Paragraph by realleging and incorporating by reference its responses to Paragraphs 1 through 304 as if fully set forth herein.

306. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

307. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

308. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

309. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

310. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

311. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

FOURTH CAUSE OF ACTION

**Missing and Inaccurate Information in Violation of CPLR 7803(3)
With Respect to All Respondents
On Behalf of Petitioners, Individually, and the Class**

312. Aetna responds to this Paragraph by realleging and incorporating by reference its responses to Paragraphs 1 through 311 as if fully set forth herein.

313. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

314. Aetna denies the allegations in this paragraph.

315. Aetna denies the allegations in this paragraph.

316. Aetna denies the allegations in this paragraph.

317. Aetna denies the allegations in this paragraph.

318. Aetna denies the allegations in this paragraph.

319. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

FIFTH CAUSE OF ACTION

**Violation of N.Y.C. Administrative Code § 12-126
With Respect to All Respondents
On Behalf of Petitioners, Individually, and the Class**

320. Aetna responds to this Paragraph by realleging and incorporating by reference its

responses to Paragraphs 1 through 319 as if fully set forth herein.

321. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced New York City Administrative Code and the CPLR and denies any allegations in this paragraph that are inconsistent with them.

322. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

SIXTH CAUSE OF ACTION

**Violation of the New York City Human Rights Law (“NYCHRL”),
N.Y.C. Admin. Code § 8-101 et seq.
With Respect to All Respondents
On Behalf of Petitioners, Individually, and the Class**

323. Aetna responds to this Paragraph by realleging and incorporating by reference its responses to Paragraphs 1 through 322 as if fully set forth herein.

324. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

325. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

326. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

327. This paragraph states legal conclusions as to which no response is required. To the

extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

328. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

329. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna denies knowledge or information sufficient to form a belief about the retired police officers and firefighters' health insurance and denies the remaining allegations in this paragraph.

330. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna denies knowledge or information sufficient to form a belief about the Disabled Retirees' health status and denies the remaining allegations in this paragraph.

331. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

332. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

SEVENTH CAUSE OF ACTION

**Violation of the New York State Human Rights Law (“NYSHRL”),
N.Y. Exec. Law § 290 et seq.
With Respect to All Respondents
On Behalf of Petitioners, Individually, and the Class**

333. Aetna responds to this Paragraph by realleging and incorporating by reference its

responses to Paragraphs 1 through 332 as if fully set forth herein.

334. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

335. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

336. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

337. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

338. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

339. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna denies knowledge or information sufficient to form a belief about the retired police officers and firefighters' health insurance and denies the remaining allegations in this paragraph.

340. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna denies knowledge or information sufficient to form a belief about the Disabled Retirees' health status and

denies the remaining allegations in this paragraph.

341. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

342. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

EIGHTH CAUSE OF ACTION

Unjust Enrichment With Respect to All Respondents On Behalf of Petitioners, Individually, and the Class

343. Aetna responds to this Paragraph by realleging and incorporating by reference its responses to Paragraphs 1 through 342 as if fully set forth herein.

344. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

345. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

346. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

347. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations

are denied.

348. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

349. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

350. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

351. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna denies knowledge or information sufficient to form a belief about the alleged statements by the City and now-Mayor Adams. Aetna denies the remaining allegations in this paragraph.

352. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced statute and contract and denies any allegations in this paragraph that are inconsistent with them.

353. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

354. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations

are denied.

NINTH CAUSE OF ACTION

**Violation of the New York City Administrative Procedure Act (“CAPA”)
With Respect to All Respondents
On Behalf of Petitioners, Individually, and the Class**

355. Aetna responds to this Paragraph by realleging and incorporating by reference its responses to Paragraphs 1 through 354 as if fully set forth herein.

356. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced New York City Administrative Procedure Act and denies any allegations in this paragraph that are inconsistent with it.

357. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced New York City Administrative Procedure Act and denies any allegations in this paragraph that are inconsistent with it.

358. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced City Charter and denies any allegations in this paragraph that are inconsistent with it.

359. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced City Charter and denies any allegations in this paragraph that are inconsistent with it.

360. This paragraph states legal conclusions as to which no response is required. To the

extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced City Charter and denies any allegations in this paragraph that are inconsistent with it.

361. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced City Charter and denies any allegations in this paragraph that are inconsistent with it.

362. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced City Charter and denies any allegations in this paragraph that are inconsistent with it.

363. Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

364. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced statements by OLR and denies any allegations in this paragraph that are inconsistent with them, including Petitioners' characterizations of same.

365. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

366. Aetna denies that the Aetna MAP is inferior to the Medicare plus-supplemental insurance that the City offers to Retirees. Further, this paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a

response is required, Aetna denies the allegations in this paragraph.

367. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

368. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced New York City Administrative Procedure Act and denies any allegations in this paragraph that are inconsistent with it.

369. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

370. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced New York City Administrative Procedure Act and denies any allegations in this paragraph that are inconsistent with it.

371. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

372. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

373. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations

are denied.

TENTH CAUSE OF ACTION

**Negligent Misrepresentation
With Respect to All Respondents
On Behalf of Petitioners, Individually, and the Class**

374. Aetna responds to this Paragraph by realleging and incorporating by reference its responses to Paragraphs 1 through 373 as if fully set forth herein.

375. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

376. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna denies knowledge or information sufficient to form a belief about the allegations in this paragraph.

377. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

378. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

379. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

380. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations

are denied.

381. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

ELEVENTH CAUSE OF ACTION

Violation of New York General Business Law § 340 (the “Donnelly Act”) With Respect to All Respondents On Behalf of Petitioners, Individually, and the Class

382. Aetna responds to this Paragraph by realleging and incorporating by reference its responses to Paragraphs 1 through 381 as if fully set forth herein.

383. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced Donnelly Act and denies any allegations in this paragraph that are inconsistent with it.

384. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

385. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

386. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced document in *Aetna Life Insurance Company v. Renee Campion et al.*, Index No. 158216/2021, [NYSCEF Doc. No. 6](#), (Sup. Ct. N.Y. Cnty.) and denies any

allegations in this paragraph that are inconsistent with it.

387. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

388. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

389. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

390. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

TWELFTH CAUSE OF ACTION

**Violation of Article V, Section 7 of the New York Constitution
With Respect to All Respondents
On Behalf of Petitioners, Individually, and the Class**

391. Aetna responds to this Paragraph by realleging and incorporating by reference its responses to Paragraphs 1 through 390 as if fully set forth herein.

392. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced New York Constitution and denies any allegations in this paragraph that are inconsistent with it.

393. This paragraph states legal conclusions as to which no response is required. To the

extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced New York City Administrative Code and denies any allegations in this paragraph that are inconsistent with it.

394. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, Aetna respectfully refers the Court to the referenced New York City Administrative Code and denies any allegations in this paragraph that are inconsistent with it.

395. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

396. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

PRAYER FOR RELIEF

397. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

398. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

399. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

400. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

401. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

402. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

403. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

404. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

405. This paragraph states legal conclusions as to which no response is required. To the extent this paragraph contains any allegations as to which a response is required, those allegations are denied.

**AS AND FOR A STATEMENT OF PERTINENT AND MATERIAL FACTS,
[PROPOSED] INTERVENOR-RESPONDENT ALLEGES AS FOLLOWS**

THE CITY'S MEDICARE ADVANTAGE PROCUREMENT PROCESS

406. In 2018, the Municipal Labor Committee (“MLC”), a group that represents retired New York City employees, and the City’s Office of Labor Relations agreed to reduce health care costs for NYC retirees by \$600 million a year starting in 2021.

407. The parties established a Tripartite Health Insurance Policy Committee to study ways to achieve these health care cost savings, which ultimately recommended that the City transition its retirees from a “Medigap” plan that covered 20% of retirees’ healthcare expenses not covered by Medicare (the “Senior Care” plan) to a Medicare Advantage Plan (“MAP”) administered by a private insurer.

408. Transitioning to a MAP would allow the City to achieve these desired cost savings while—most importantly—maintaining high-quality, premium-free health care for all retirees.

409. The City and the MLC thereafter engaged in a lengthy and substantively detailed procurement process in which multiple private insurers submitted proposals to administer the MAP. In 2021, the City chose to partner with an entity known as the “Alliance,” a partnership between Empire BlueCross BlueShield and EmblemHealth. Aetna, as the only other finalist in the process, was the runner up in the City’s selection process.

410. In October 2021, a small group of retirees and the Organization, purporting to speak for the 250,000+ retirees, brought an Article 78 proceeding in an effort to stop the City from undertaking the transition to the MAP.

411. The court ultimately held that the City could undertake the transition to the MAP, but only by either (a) eliminating all of the more expensive, optional plans that were otherwise available to retirees such as Senior Care, or (b) subsidizing those plans such that the Retirees would not have to pay the incremental \$191 per month. This ruling was affirmed on appeal.

412. Given the continuing uncertainty as to which plans would be offered to retirees moving forward and the delay in implementation, the Alliance ultimately decided in July 2022 that it could no longer move forward on partnering with the City on providing the MAP to the retirees.

**THE CITY CONTRACTS WITH AETNA TO ADMINSTRATE THE AETNA
MEDICARE ADVANTAGE PLAN**

413. In need of a new partner going forward, the City ultimately turned to the runner up in the procurement process—Aetna.

414. Based on Aetna’s proposal during this process, the City and the MLC determined that Aetna was a fully qualified partner to administrate the MAP due to, among other reasons, the fact that it already offered a successful group Medicare Advantage plan to City retirees (in which approximately 9,100 retirees were currently enrolled), and because Aetna administers numerous, highly successful group Medicare Advantage plans to large public sector entities across the country.

415. On March 30, 2023, the City publicly announced that it had signed a multi-year contract with Aetna to administer the MAP starting on September 1, 2023.

416. Under the Aetna Medicare Advantage PPO Plan (the “Aetna MAP”), retirees will receive comprehensive, premium-free health coverage, in addition to enhanced benefits not offered in the current Senior Care plan.

**THE AETNA MEDICARE ADVANTAGE PLAN IS NOT A DIMINUTION OF
RETIREE BENEFITS**

417. Aetna worked hand in hand with the City and the MLC to design one of the most generous Medicare Advantage plans offered on the market. Key aspects of the plan include:

- ***Extensive Network of Providers*** – At least 97% of providers who accepted the Senior Care plan have indicated that they will accept the Aetna MAP, including the 88% of providers in the Aetna MAP network, the 8.3% of providers who are not contracted with Aetna but have accepted payment from Aetna, and the other hundreds of providers who have indicated in discussions with Aetna that they will

accept the Aetna MAP. Additionally, there are certain service providers that have signed network contracts with Aetna *specifically for* the Aetna MAP.

- **Limited Prior Authorization Requirements** - Aetna waived 85% of its typical prior authorization requirements for the Aetna MAP. Prior authorization requirements are standard requirements used across Original Medicare, Medicare Advantage, and many commercial healthcare plans to ensure insureds receive the right treatment at the right place and time. In the Aetna MAP, prior authorizations are only required for a limited set of items/services, such as pre-service inpatient hospital stays, rehabilitation facility stays or long-term acute facility stays, and skilled nursing facility care, as well as certain services/items, like cosmetic procedures; new drugs, therapies, and technologies; and experimental and investigational procedures.
- **Limited Costs for Retirees** – The Aetna MAP offers retirees a lower deductible of \$150 (compared to \$276 in the current Senior Care plan). In addition, it imposes a \$1,500 cap on out-of-pocket expenses (compared to unlimited financial liability under Senior Care). And due to CMS requirements, it is highly unlikely that retirees who saw providers who would not accept the Aetna MAP would be forced to pay out of pocket for their medical care and not get promptly reimbursed by Aetna. With respect to prescription drug costs, Aetna MAP’s Part D prescription formulary covers *all* approved drugs for seniors, many of which are offered at substantial savings to retirees. All Tier 1 generics at preferred pharmacies and mail order are also offered to retirees for free.
- **Other Benefits** – The Aetna MAP offers transportation to certain doctors’

appointments, fitness programs, and wellness incentives.

AETNA'S ROLE IN IMPLEMENTING THE AETNA MEDICARE ADVANTAGE PLAN

418. Aetna invested significant resources and rolled out an extensive information campaign in an effort to provide the retiree population with all details concerning their new healthcare plan.

419. Starting in mid-March 2023, the retirees received multiple comprehensive packages from Aetna with detailed information about the plan and resources available. The Aetna materials provide a detailed benefit summary of the plan and the Evidence of Coverage, along with information about the Aetna Medicare Part D prescription drug rider offered by SilverScript.

420. Aetna also opened a dedicated call center that is open Monday to Friday (8:00 am – 9:00 pm) to answer retirees' questions concerning the benefits, the network, or clinical transitions.

421. Additionally, Aetna and the municipal unions offered in-person meetings all over the New York metropolitan area, as well as in other states with large retiree populations such as New Jersey and Florida, and virtually, to assist retirees with the transition. The onsite meetings offered retirees the opportunity to have individual discussions with Aetna representations to assist with any questions they may have.

IMPLEMENTING AETNA'S MEDICARE ADVANTAGE PLAN IS NOT ARBITRARY AND CAPRICIOUS

422. Petitioners filed the instant action seeking to prevent the City from implementing the Aetna MAP with Aetna, claiming in relevant part that there are significant flaws rendering the City's implementation plan arbitrary and capricious. Specifically, Petitioners argue that: (i) the City's implementation of the Aetna MAP will result in a dangerous disruption in life-saving treatment; (ii) the retirees were provided misleading, missing and/or inaccurate information about

the Aetna MAP; (iii) the Aetna MAP constitutes an improper restriction on trade; and (iv) the City is diminishing the health insurance benefits provided to retirees and their dependents and has not made a corresponding diminution in the benefits offered to active employees.

423. First, Petitioners' allegation that the Aetna MAP will result in a dangerous disruption in life-saving treatment is based on a variety of misstatements, misunderstandings, and outright falsehoods regarding the Aetna MAP.

424. Accordingly, Aetna states the following in response to Petitioners' baseless allegations: (i) contrary to Petitioners' allegations that retirees will be denied access to their doctors should they choose to enroll in the Aetna MAP, at least 97% of providers who accepted the Senior Care have indicated that they will accept the Aetna MAP, including the 88% of providers in the Aetna MAP network, the 8.3% of providers who are not contracted with Aetna but have accepted payment from Aetna, and the other hundreds of providers who have indicated in discussions with Aetna that they will accept the Aetna MAP; (ii) contrary to Petitioners' allegations suggesting that retirees who choose to opt out of the Aetna MAP and go to the open market for Medigap coverage will be denied enrollment, federal regulations provide that Medicare-eligible retirees aged 65 or older whose employer chose to terminate their group plan which supplements original Medicare have a Federally protect right to access to a "Guaranteed Issue" Medigap or supplemental coverage on the open market, regardless of preexisting conditions, and 36 states have explicitly extended Medigap coverage GI rights to retirees under the age of 65 who are Medicare-eligible; (iii) the retirees will not be subject to high co-pays or prescription drug prices that would make it impossible for them to receive care; and (iv) Aetna's prior authorization requirements will not prevent retirees from receiving needed care.

425. Second, there is no truth to Petitioners' claim that the retirees were provided with a

series of misleading, missing and/or inaccurate information about the Aetna MAP, as Aetna invested significant resources and rolled out an extensive information campaign in an effort to provide the retiree population with all details concerning their new healthcare plan.

426. Third, the Aetna MAP is not an improper restraint on trade for several reasons, including the fact that the City engaged in a lengthy procurement process to select a vendor with a detailed proposal and experience in the market to offer a Medicare Advantage plan to its retiree population and that the retirees will still have the option to choose coverage on the open market should they decide to opt out of the Aetna MAP.

427. Fourth, because the Aetna MAP offers more—not fewer—benefits to the retiree population, the City is not diminishing the health insurance benefits provided to retirees.

428. As noted above and in further detail in Aetna’s motion to intervene and supporting papers, Petitioners’ claims and allegations are based solely on hearsay and speculation. Because Aetna is the entity that contracted with the City to administer the plan, it is uniquely positioned to rebut the many falsehoods that form the basis of Petitioner’s allegations regarding the specific terms of the proposed Aetna MAP and its impact on the retiree population.

AFFIRMATIVE DEFENSES TO THE VERIFIED PETITION

As and for a First Affirmative Defense

The Verified Petition fails to state a cause of action for which relief can be granted.

As and for a Second Affirmative Defense

Petitioners, individually and on behalf of the Class, lack standing to make the instant challenge.

As and for a Third Affirmative Defense

Petitioners’ claims are barred, in whole or in part, by their failure to join necessary

parties.

As and for a Fourth Affirmative Defense

Petitioners' claims are barred, in whole or in part, by applicable statutes of limitation and/or the doctrine of laches by virtue of their failure to bring their Petition on a timely basis.

As and for a Fifth Affirmative Defense

Petitioners' claims are barred, in whole or in part, because a class cannot bring an Article 78 proceeding. *See Conrad v. Regan*, 155 A.D.2d 931, 931-932 (4th Dept. 1989) ("Class action certification is inappropriate in Article 78 proceedings where, as here, plaintiffs have sued on behalf of a class of persons and challenge an administrative determination impacting upon the entire class, a declaratory judgment action is a proper procedural device.").

As and for a Sixth Affirmative Defense

Petitioners' claims are barred, in whole or in part, by the doctrine of unclean hands.

As and for a Seventh Affirmative Defense

Petitioners' claims are barred, in whole or in part, by applicable law.

As and for an Eighth Affirmative Defense

Petitioners' claims are barred, in whole or in part, by the doctrine of collateral estoppel and/or res judicata.

Dated: New York, New York
June 13, 2023

ALSTON & BIRD LLP

/s/ Karl Geercken

Karl Geercken

Elizabeth A. Buckel

Sharon Steinerman

Kristen C. Kuan

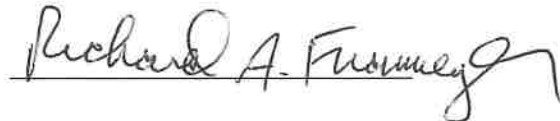
90 Park Avenue
New York, New York 10016
Tel.: 212-910-9400

*Counsel for Proposed Intervenor-
Respondent Aetna Life Insurance Company*

VERIFICATION

RICHARD A FROMMEYER, being duly sworn, deposes and says under penalty of perjury:

I am an authorized representative of [Proposed] Intervenor-Respondent Aetna Life Insurance Company (“Aetna”). I have read Aetna’s Verified Answer to the Verified Petition, and it is true to the best of my knowledge, information, and belief.



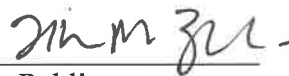
RICHARD A. FROMMEYER

STATE OF NEW YORK)

) ss:

COUNTY OF NEW YORK)

On the 12th day of June, 2023, the undersigned a Notary Public in and for said State, personally appeared RICHARD A. FROMMEYER personally known to me or provided to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his individual capacity, and that by his signature on the instrument, the individual, or person upon behalf of whom the individual acted, executed the instrument.



Notary Public

TINA M. ZOCCALI
Notary Public, State of New York
No. 01ZO6059025
Qualified in Westchester County
Commission Expires May 21, 2027