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

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 THE NEW YORK CITY ORGANIZATION OF PUBLIC SERVICE RETIREES, INC.

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.

Index No. _____

VERIFIED ARTICLE 78 PETITION AND COMPLAINT

DEMAND FOR JURY TRIAL

Petitioners-Plaintiffs 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 the NYC ORGANIZATION OF PUBLIC SERVICE RETIREES, INC. (the "Organization," and together with the other Petitioners-Plaintiffs, "Petitioners"), by and through their attorneys, bring this hybrid Article 78 proceeding/class action for damages, equitable relief, and injunctive relief against the CITY OF NEW YORK, MAYOR ERIC ADAMS, the CITY OF NEW YORK OFFICE OF LABOR RELATIONS, COMMISSIONER RENEE CAMPION, 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 CHANCELLOR DAVID C. BANKS (collectively, "Respondents" or "the City"). Petitioners allege the following based upon personal information as to allegations regarding themselves, on their own investigation, and on the investigation of their counsel, and on information and belief as to all other allegations:

NATURE OF ACTION

1. This case concerns the Respondents' third unlawful attempt in the past two years to strip Medicare-eligible (*i.e.*, elderly and/or disabled) retired City workers and their Medicare-eligible dependents of promised healthcare benefits. Petitioners seek relief on behalf of themselves and a proposed class of all Medicare-eligible retired City workers and their Medicare-eligible dependents (collectively, the "Retirees").

2. For over 50 years, the City of New York has guaranteed Medicare-eligible retired City workers and their Medicare-eligible dependents a choice of Medicare Supplemental insurance plans, also known as "Medigap" plans, fully paid for by the City.

3. Medicare Supplemental insurance is critical because traditional Medicare – which is paid for by the federal government – covers only 80% of healthcare costs. Medicare Supplemental insurance plans – which must be paid for either by the individual or someone else (such as their employer or former employer) – cover the remaining 20%.

4. The overwhelming majority of Retirees are enrolled in a Medicare Supplemental plan known as Senior Care ("Senior Care").

5. Senior Care is administered by EmblemHealth, which is a not-for-profit health insurer.[1]

6. The City is legally obligated to cover the cost of Medicare Supplemental insurance. That obligation exists in statute and as a result of clear and unambiguous promises that the City has repeatedly made to Retirees for over 50 years.

7. The City is also prohibited – by statute and the New York Constitution – from diminishing the health insurance benefits of Retirees.

8. For the past two years, the City has been trying to escape its healthcare obligations.

9. In or around July 2021, the City announced that, as of January 1, 2022, all Retirees who did not affirmatively opt out would be disenrolled from their existing health insurance plans and enrolled in a newly created and materially inferior Medicare Advantage plan ("MAP"), which is paid for by the federal government.

10. If Retirees wanted to remain in a Medicare Supplemental plan, they would have had to pay $191.57 per person per month.

11. The City's motivation was simple: by switching Retirees to a MAP, the City could shift the cost of Retiree healthcare from the City to the federal government (or for those who wanted to remain in a Medicare Supplemental plan, to the Retirees themselves).

12. Doing so would save the City hundreds of millions of dollars a year. But those savings will not benefit taxpayers or the City budget;[2] all of the money saved will go into a

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[1] *See, e.g.*, EmblemHealth, *Our Story: Creating Healthier Futures, Together*, https://perma.cc/96QM-BCEY.

[2] *Testimony of Jonathan Rosenberg to the New York City Council Committee on Civil Service and Labor Regarding Changes to Municipal Retirees' Healthcare Plan*, October 28, 2021,

discretionary fund controlled by the Mayor and union leaders, with no "accountability or direct oversight."[3]

13. The Retirees sued the City to halt the implementation of the MAP, and they won.

14. The basis for that victory was that New York City Administrative Code § 12-126 requires the City to pay the entire cost of health insurance for Retirees.

15. This Court permanently enjoined the Respondents "from passing along any costs of the New York City retirees' current plan to the retiree." NYSCEF Doc. No. 216, Index No. 158815/2021.

16. While the above-mentioned lawsuit was pending, the City adopted another illegal tactic to save money: co-pays.

17. Beginning in January 2022, Retirees who were enrolled in Senior Care were suddenly charged co-pays every time they saw a medical provider or received a test, procedure, treatment, or therapy.

18. Retirees sued to halt the imposition of these illegal co-pays, and this Court granted a preliminary injunction in January 2023. The First Department unanimously affirmed on May 25, 2023. That case is ongoing.

19. But the City is not yet done trying to escape its legal obligations.

20. After this Court invalidated the Respondents' previous attempt to force Retirees into a MAP, Respondents adopted a new tactic: eliminate all Medigap plans – and a corresponding

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https://perma.cc/9VHP-U33C, at 1 (explaining how the switch to Medicare Advantage would "provide[] the city with no actual budgetary savings").

[3] *Id.* Moreover, because insurers overcharge the federal government for Medicare Advantage plans, switching Retirees to Medicare Advantage would likely "cost taxpayers . . . more than keeping them in original Medicare." Fred Schulte, *Medicare Advantage's cost to taxpayers has soared in recent years, research finds*, NPR, https://perma.cc/RA5W-NRZ9.

choice of health insurance coverage – and replace those plans with the single option of Medicare Advantage. Absent injunctive relief, on September 1, 2023, "the City will discontinue the Senior Care Plan and all [ten] other retiree plans," and will automatically enroll all Medicare-eligible retirees and Medicare-eligible dependents in a new Aetna Medicare Advantage plan (the "Aetna MAP"). Gardener Affirmation ("Aff."), Ex. A. Retirees who live in the City or in Nassau, Suffolk, Rockland, Orange, or Westchester Counties will also have the option of enrolling in an existing Medicare Advantage plan called HIP VIP, which has a very limited provider network that enrollees must stay within. Pizzitola Affidavit ("Aff.") at ¶ 25. 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. Gardener Aff., Ex. A. However, Retirees who opt out must also waive their City health insurance coverage, meaning they will have to find and pay for their own health insurance on the open market and also pay for their own Medicare Part B premium, IRMAA, and other costs.

21. The City's purported rationale is that, if it does not *offer* a Medigap plan, it does not have to *pay* for a Medigap plan. The City is wrong.

22. For over 50 years, the City has clearly and unambiguously promised Retirees – in both written documents and verbal communications – that when they retired and became Medicare-eligible, it would provide and pay for a choice of Medicare Supplemental insurance.

23. The City is obligated by statute and the New York Constitution to do the same.

24. The City has also acted without following the procedures required by the New York City Administrative Procedure Act.

25. The acts described above not only implicate Article 78 concerns, they also violate Retirees' rights under City and State anti-discrimination laws, General Business Law § 340, the

New York Constitution, and common law, including promissory estoppel, unjust enrichment, and negligent misrepresentation.

26. All Respondents are liable for the causes of action listed below based on their own individual misconduct. In addition, they are also liable for each cause of action because they acted in concert and conspired to commit each of the wrongful acts that have harmed Retirees.

THE PARTIES

A. Petitioners-Plaintiffs

27. Petitioner-Plaintiff Robert Bentkowski is a resident of Florida and retired New York City employee. Bentkowski Aff. at ¶ 2. He began working for the City's Emergency Medical Services ("EMS") in January 1989 and later joined the New York City Fire Department ("FDNY") until he retired in 2014 due to lung and kidney diseases. *Id.* ¶¶ 2, 4. Mr. Bentkowski is still being treated for these ailments. *Id.* ¶ 4. Although under the age of 65, he is Medicare-eligible due to illness and disability. *Id.* ¶¶ 2, 4.

28. Mr. Bentkowski is currently enrolled in Medicare plus Senior Care. *Id.* ¶ 5. In October 2019, Mr. Bentkowski's left kidney was removed. *Id.* ¶ 4. He received his first kidney transplant and had his right kidney removed in November 2022. *Id.* Since his surgery, Mr. Bentkowski has suffered from infection and rejection of the transplanted kidney, and as a result spent forty days readmitted to Advent Health Hospital in Florida ("Advent"). *Id.* If his body continues to reject his new kidney, Mr. Bentkowski will need a new kidney transplant. *Id.* ¶ 5. Without his Medicare-plus-supplemental insurance, Mr. Bentkowski will not be able to have another kidney transplant at Advent because it does not accept Medicare Advantage for *any* transplants. *Id.* ¶¶ 5-6.

29. The City clearly and unambiguously promised Mr. Bentkowski that when he retired and became eligible for Medicare, the City would provide and pay for a choice of Medicare

Supplemental insurance. *Id.* ¶ 5. Mr. Bentkowski relied on this promise when accepting, and continuing, employment with the City. Although the pay at FDNY was low – and the dangers incredibly high – Mr. Bentkowski understood that his service, which included "sacrific[ing] [his] days, nights, weekends, and holidays … work[ing] during times of major disaster, [and] putting [himself] in harm's way on innumerable occasions," "was acknowledged and compensated through a secure retirement plan and the ability to choose between excellent health insurance plans," including a choice of Medicare Supplemental insurance. *Id.* ¶¶ 3-4. Mr. Bentkowski also relied on this promise when choosing his medical providers, including his surgeons and hospital. *Id.* ¶ 7. Due to his current medical state, he does not have the energy to find new providers, nor can he travel for hours to another facility. *Id.*

30. Because Advent will not accept the Aetna MAP, Mr. Bentkowski is considering purchasing a Medigap plan on the open market. *Id.* ¶ 8. However, he has received quotes for a *minimum* of $800 per month, assuming he can even get a Medigap plan. *Id.* Had he known that the City would renege on its healthcare promise, he would have made very different financial choices in his life. *Id.*

31. The City's actions have caused Mr. Bentkowski significant, and, if not enjoined, irreparable injury.

32. Petitioner-Plaintiff Karen Engel is a resident of Florida and retired New York City employee. Engel Aff. at ¶ 2. She worked for the Department of Education for 30 years as a special education teacher, from 1974 until her retirement in 2004. *Id.* She currently has Medicare plus Senior Care. *Id.* ¶¶ 6, 16.

33. The City repeatedly promised Ms. Engel—both during her employment with the City and during her retirement—that when she retired and became eligible for Medicare, the City

would pay for her Medicare Part B premium as well as her choice of a Medicare Supplemental plan. *Id.* ¶ 3. That promise was made to her in writing in Summary Program Descriptions and various other documents. *Id.* Ms. Engel relied on this promise when deciding to spend her career serving the City, as well as when making important healthcare and savings decisions. *Id.* ¶¶ 4-7, 10-11, 13. She also relied on this promise when choosing her medical providers. *Id.* ¶ 8-9. "Never in [her] wildest dreams did [Ms. Engel] think NYC would take away the Medigap plans that have protected its civil servants so well and was a source of pride for NYC as well as a real testament to the way the City had provided for retirees." *Id.* ¶ 7.

34. Many of Ms. Engel's medical providers—including the Mayo Clinic in Jacksonville, Florida—will not accept any Medicare Advantage plan. *Id.* ¶ 9. Several of her specialists have never even heard of the Aetna MAP, and she is therefore unable to make an informed decision about how to proceed. *Id.* Medicare plus Senior Care have covered Ms. Engel through several surgeries, procedures, and diagnostic testing with no fear of denied coverage, rejected prior authorizations, or surprise billing. *Id.* ¶ 16.

35. The City's actions have caused Ms. Engel significant, and, if not enjoined, irreparable injury.

36. Petitioner-Plaintiff Michelle Feinman is a resident of Arizona and retired New York City employee. Feinman Aff. at ¶ 2. She worked as a Physical Education ("P.E.") teacher and dean from 1986 until her retirement in 2008. *Id.* She is currently enrolled in Medicare plus Senior Care. *Id.* ¶ 6.

37. The City clearly and unambiguously promised Ms. Feinman that when she retired and became eligible for Medicare, the City would provide and pay for a choice of Medicare

Supplemental health insurance. *Id.* ¶ 6. In addition to the written promises, this promise was also made to her in verbal communications. *Id.*

38. Ms. Feinman decided to become a public-school teacher, rather than take a more profitable job in the private sector, in reliance on the City's promise of excellent healthcare benefits, including City-funded Medicare Supplemental insurance. *Id.* ¶ 3-4. She also relied on the City's promise when making important healthcare and savings decisions, and when choosing her medical providers. *Id.* ¶ 10. She would have made different decisions had she known the City might not provide her Medicare plus Medicare Supplemental insurance.

39. In 2006, Ms. Feinman was gravely injured and became a paraplegic. *Id.* ¶ 5. She ended up having to retire as a result. *Id.* By 2016, she needed back and neck surgery. *Id.* ¶ 7. Complications resulted in her becoming a quadriplegic. *Id.* She uses a wheelchair and a service dog, goes to physical therapy at least weekly, and requires specialized care to maintain her current level of body movement. *Id.*

40. In 2019, Ms. Feinman discovered that she has lung damage. *Id.* ¶ 8. Her doctor suspects that it is residual damage from 9/11. *Id.* She requires oxygen treatment at night and must have regular follow-up visits with her doctors to monitor her lung health. *Id.*

41. Ms. Feinman's primary care doctor and physical therapist will not take the Aetna MAP. *Id.* ¶ 9. Her other providers have told her that they are unlikely to accept the Aetna MAP. *Id.* Few doctors accessible to Ms. Feinman in Arizona will accept the Aetna MAP. *Id.* ¶ 11. Because Ms. Feinman is under 65 and lives in the state of Arizona, she is not eligible to purchase a Medigap plan on the open market until she turns 65. *Id.* ¶ 12. She fears that she will be unable to access her life-sustaining physical therapy. *Id.* ¶ 11. As a result of the City's actions, her ability to physically move in the near future is in jeopardy. *Id.*

42. The City's actions have caused Ms. Feinman significant, and, if not enjoined, irreparable injury.

43. Petitioner-Plaintiff Nancy Losinno is a resident of New York. Losinno Aff. at ¶ 2. Her husband worked for the FDNY for 33 years and passed away as a result of a 9/11-related illness. *Id.* ¶ 2. She is entitled to his healthcare for life because his death was ruled a line-of-duty death. *Id.* ¶¶ 2, 4.

44. During her husband's employment with the City, the City clearly and unambiguously promised that when she became eligible for Medicare, the City would provide and pay for her Medicare Part B premium plus her choice of a Medicare Supplemental plan. *Id.* ¶ 3. The City made this promise in writing and during her husband's pre-retirement seminar at FDNY headquarters in 2002. *Id.* She attended this seminar with him and took copious notes. *Id.* At the seminar, the City verbally assured attendees that they would have Medicare and Medigap coverage when they became Medicare-eligible. *Id.*

45. Ms. Losinno and her late husband made important—and irreversible—employment, healthcare, and savings decisions in reliance on this promise. *Id.* ¶ 5. Her husband, for example, decided to spend his career serving the City in reliance on the promised healthcare benefits, including the right to City-funded Medicare Supplemental insurance. *Id.* The main reason he stayed with FDNY for so long was because of these benefits. *Id.* She stayed home with their child and therefore did not carry her own insurance. *Id.* Ms. Losinno also chose her medical providers based on the City's promise. *Id.* ¶ 6. She and her late husband also made important financial decisions based on the City's promise. Ms. Losinno and her late husband would have made very different decisions if they had known the City would not honor its healthcare promise.

46. Ms. Losinno suffers from several serious medical conditions and, as a result, takes 20 medications. *Id.* Her endocrinologist, cardiologist, gynecologist, sleep specialist, ophthalmologist, podiatrist, and orthopedist have all informed her that they will not accept the Aetna MAP. *Id.*

47. The City's actions have caused Ms. Losinno significant, and, if not enjoined, irreparable injury.

48. Petitioner-Plaintiff John Mihovics is a resident of New York and retired New York City employee. J. Mihovics Aff. at ¶¶ 2-3. He spends half of his time in Cape Cod, Massachusetts. *Id.* Mr. Mihovics worked for the New York City Housing Authority ("NYCHA") as a carpenter for many years. *Id.* ¶ 3.

49. The City clearly and unambiguously promised Mr. Mihovics—both during his employment and during his retirement—that when he retired and became eligible for Medicare, the City would provide and pay for his Medicare Part B premium plus his choice of a Medicare Supplemental plan. *Id.* ¶ 4. This promise was made in writing in Summary Program Descriptions and in various other documents. *Id.* It was also made to him verbally in meetings with NYCHA. *Id.*

50. Mr. Mihovics detrimentally relied on the City's promise throughout his life for important employment, healthcare, and savings decisions. *Id.* ¶¶ 5, 8, 11. For example, he moved into the public sector after 20 years based on the City's promised healthcare benefits, including the right to City-funded Medicare Supplemental insurance. *Id.* at ¶ 5. Had he known that the City would renege on its promise, he would have taken higher-paying employment in the private sector. *Id.* at ¶ 10. He also would have made very different financial and investment decisions, including saving more money, altering his spending habits, and budgeting differently. *Id.* at ¶ 11. His wife

also retired early from her public sector job in New Jersey in reliance on the City's promise. *Id.* *See also* E. Mihovics Aff. at ¶ 4. In addition, he and his wife chose their medical providers in reliance on the City's promise. *Id.* at ¶¶ 6, 11.

51. Many of Mr. Mihovics's doctors and his wife's doctors have informed them that they will not accept the Aetna MAP. *Id.* ¶ 6. His wife needs specialized, expert care for her spleen artery aneurism. *Id.* Because they spend so much time on Cape Cod, they have limited options for medical providers. *Id.* ¶ 7. The only hospital on the Cape, as well as *all providers* on the Cape, have indicated that they will not be in-network with the Aetna MAP. *Id.* The only other hospital nearby is 71 miles away and has said it is not sure if it will accept the Aetna MAP. *Id.* Mr. Mihovics and his wife do not have the funds for large out-of-pocket costs. *Id.*

52. The City's actions have caused Mr. Mihovics significant, and, if not enjoined, irreparable injury.

53. Petitioner-Plaintiff Karen Miller is a resident of Florida and retired New York City employee. Miller Aff. at ¶ 2. She worked for the New York City Department of Consumer Affairs from 1979 to 2007 as a staff attorney. *Id.*

54. The City clearly and unambiguously promised Ms. Miller—both during her employment and during her retirement—that when she retired and became eligible for Medicare, the City would provide and pay for a choice of health plans, including premium-free Medicare Supplemental plans, as well as reimbursement for Medicare Part B premiums. *Id.* ¶ 3. This promise was made in writing in Summary Program Descriptions and in various other documents. *Id.* It was also made to her in verbal communications with the City throughout her employment. *Id.*

55. Ms. Miller detrimentally relied on the City's promise throughout her life when making important employment and healthcare decisions. *Id.* ¶ 4. She decided to spend her career serving the City in reliance on this promise; as a lawyer, she could have made significantly more money in the private sector. *Id.* ¶ 14. Had Miller known that the City would renege on its promise, she would have pursued higher-paying employment at a private law firm. *Id.* ¶ 16.

56. Ms. Miller also relied on the City's promise when choosing not only her medical providers, but also her home: in 2009, she decided to move into Oak Hammock at the University of Florida, a continuing care facility that required her to pay a non-refundable fee that made up a substantial part of her live savings. *Id.* ¶ 4. Oak Hammock requires residents to contractually obligate themselves to maintain a Medigap policy, *id.* ¶ 6, and it is out-of-network with *all* Medicare Advantage plans, *id.* ¶ 7. Ms. Miller decided to move into Oak Hammock, pay the non-refundable fee, and make a contractual obligation to Oak Hammock in reliance on the City's promise that it would provide a premium-free Medigap policy. *Id.* ¶¶ 4, 6.

57. Ms. Miller lives at Oak Hammock and receives much of her medical care there. *Id.* ¶ 4. Her other medical providers, which include her physical therapist, occupational therapists, primary care physician, neurologist, sports medicine doctor, hepatologist, gastroenterologist, otolaryngologist, rheumatologist, and orthopedic surgeon, as well as her local hospital, UF Health Shands Hospital, are all out-of-network with the Aetna MAP as well. *Id.* ¶ 8.

58. As a result of the City's actions, Ms. Miller will be unable to meet her contractual obligation to Oak Hammock, thereby putting her continued care and residence there at risk.

59. Because Ms. Miller lives in Florida, which is not a guaranteed-issue state, she may not be able to purchase her own Medigap policy on the open market. *Id.* ¶ 15. Even if she is able to, she will incur expenses she cannot afford. *Id.*

60. The City's actions have caused Ms. Miller significant, and, if not enjoined, irreparable injury.

61. Petitioner-Plaintiff Erica Rhine is a resident of Florida and retired New York City employee. Rhine Aff. at ¶ 2-3. She worked for the City as a public-school teacher and a guidance counselor. *Id.* ¶ 3.

62. The City clearly and unambiguously promised Ms. Rhine—both during her employment and during her retirement—that when she retired and became eligible for Medicare, the City would provide and pay for her Medicare Part B premium plus her choice of a Medicare Supplemental plan. *Id.* ¶ 4. This promise was made in writing in Summary Program Descriptions and various other documents. *Id.*

63. Ms. Rhine detrimentally relied on this promise throughout her life and career when making important employment and financial decisions. *Id.* ¶¶ 5, 6. She chose to work for, and continue working for, the City in reliance on its promise. *Id.* ¶ 5. After Ms. Rhine got divorced, she considered seeking out another profession that would have paid more, but she decided to stay with the DOE in reliance on the City's promise. *Id.* ¶ 6. Ms. Rhine also chose her medical providers based on the understanding that she would have City-funded Medicare Supplemental insurance in her old age. *Id.* ¶ 7. Had Ms. Rhine known that the City would renege on its promise, she would have considered higher-paying employment in the private sector. *Id.* ¶ 8. She also would have made very different financial and investment decisions, including saving more money, altering her spending habits, investing differently, and budgeting her savings differently. *Id.*

64. Ms. Rhine receives care from the Mayo Clinic in Jacksonville, Florida. *Id.* The Mayo Clinic does not accept Medicare Advantage plans. *Id.*

65. The City's actions have caused Ms. Rhine significant, and, if not enjoined, irreparable injury.

66. Petitioner-Plaintiff Ellen Rieser is a retired New York City employee. Rieser Aff. at ¶ 1. She worked for the City from 1997 until her retirement in 2021 as an attorney in multiple City agencies. *Id.*

67. The City repeatedly promised Ms. Rieser—both during her employment with the City and while preparing for her retirement—that when she retired and became eligible for Medicare, the City would provide and pay her Medicare Part B premium plus her choice of a Medicare Supplemental plan. *Id.* ¶ 2. This promise was made in Summary Program Descriptions and other documents. *Id.* It was also made to her verbally at the mandatory orientation meetings she attended for each of the three agencies for which she worked. *Id.* ¶ 3. The same promise was made to her decades letter when attending live classes offered by the Office of Labor Relations ("OLR") about health benefits when transitioning to retirement. *Id.*

68. Ms. Rieser detrimentally relied on the City's promise when making important financial, employment, and other decisions in her life. *Id.* ¶ 4. She suffered serious health problems growing up and one of the primary reasons that she worked for the City was for its promise of a free Medicare Supplemental plan of her choice, and to pay her Medicare Part B premium, as long as she joined the City's pension plan and vested. *Id.* ¶ 5. Had Ms. Rieser known that the City would renege on its promise, she would have worked as an attorney in the private sector, where the pay would have been much higher. *Id.* ¶ 6. Ms. Rieser also detrimentally relied on the City's promise when selecting her past and current healthcare providers. *Id.* ¶ 8. Most of her current doctors are with NYU Langone and either will not accept the Aetna MAP or were unsure what the plan was, and whether they would accept it. *Id.* ¶¶ 6-11.

69. Ms. Rieser suffers from numerous health conditions, including serious spinal injuries suffered on the job, as well as lung issues that are likely the result of the City ordering her to return to work in lower Manhattan shortly after 9/11. *Id.* ¶¶ 14-16.

70. As a result of the City's plan to take away her health insurance, Ms. Rieser is getting frequent migraine headaches triggered by stress and anxiety. *Id.* ¶ 12.

71. If Ms. Rieser stays on the Aetna MAP, she will likely lose access to her current medical providers. Ms. Rieser cannot afford to pay for a Medigap plan and her Medicare premium without foregoing necessities. For example, she would likely not be able to afford to relocate to California to be with her only child, and she may have to go back to work part-time. *Id.* ¶ 18.

72. The City's actions have caused Ms. Rieser significant, and, if not enjoined, irreparable injury.

73. Petitioner-Plaintiff Beverly Zimmerman is a resident of Nevada and a retired New York City employee. Zimmerman Aff. at ¶ 2. She worked as a public-school teacher and principal from 1967 to 2000. *Id.*

74. The City repeatedly promised Ms. Zimmerman—both during her employment with the City and during her retirement—that when she retired and became eligible for Medicare, the City would pay for her Medicare Part B premium plus her choice of a Medicare Supplemental plan. *Id.* ¶ 3. This promise was made in Summary Program Descriptions and various other documents, as well as in verbal communications. *Id.*

75. Ms. Zimmerman detrimentally relied on this promise throughout her life when making important employment, healthcare, and savings decisions. *Id.* ¶ 4. She decided to spend her career serving the City in reliance on the promised healthcare benefits. *Id.* When she first started working for the City, her salary was only $5,200 per year, but she was reassured that part

of her compensation was healthcare benefits that would continue into her retirement. *Id.* This promise informed her career path and financial decision-making for over three decades. *Id.*

76. Ms. Zimmerman chose her medical providers in reliance on the City's promise. *Id.* ¶ 5. Nevada's medical care is ranked 45th in the United States, so it has taken Ms. Zimmerman a long time to build and find her current network of competent doctors. *Id.* Most of these providers will not accept the Aetna MAP or any Medicare Advantage plan. *Id.* ¶ 6. Her endocrinologist—who monitors her potentially cancerous thyroid nodules—does not accept any Medicare Advantage plan. *Id.* The cost to continue seeing this provider with self-pay would be prohibitively expensive. *Id.*

77. Ms. Zimmerman is also a breast cancer survivor and relies on the Mayo Clinic in Phoenix, Arizona as her hospital of choice in case of a relapse. *Id.* ¶ 7. The Mayo Clinic will not accept Medicare Advantage plans. *Id.* Her oncologist also will not accept the Aetna MAP, and the Cancer Centers of Nevada only accepts one type of Medicare Advantage. *Id.* Nor will her cardiologist accept the Aetna MAP. *Id.* ¶ 8.

78. Ms. Zimmerman's retinologist, primary care physician, ophthalmologist, dermatologist, and podiatrist are unsure if they will accept the Aetna MAP because they have received no information about it. *Id.* ¶ 11.

79. Ms. Zimmerman has been searching for a Medigap plan because she needs continuity of care. *Id.* ¶ 12. But OLR has made it very difficult for her to obtain the necessary documentation to do so. *Id.* Ms. Zimmerman fears that, if she opts out of the Aetna MAP, she will suffer a gap in coverage. *Id.*

80. OLR has also failed to provide Ms. Zimmerman with sufficient information about the Aetna MAP to make an informed choice. *Id.* ¶ 13.

81. Had Ms. Zimmerman known that the City might renege on its healthcare promise, she would have looked for medical providers that accepted Medicare Advantage and would not have moved to Nevada for her retirement. *Id.* ¶ 14. She also would have continued to work as a principal for an additional two years—which would have increased her pension by $15,000 to $30,000 more per year—so that she could have afforded her own Medigap plan. *Id.* ¶ 15. She also would have considered a higher paying job in another school district. *Id.*

82. These individual Petitioners-Plaintiffs—like Retirees in general—did not expect to have to, and cannot afford to, significantly increase their healthcare expenses. They live on limited, fixed incomes. They cannot afford to pay the thousands of dollars a year it would cost to pay for Medicare plus supplemental insurance. If they need to do so, it will require them to substantially reduce spending on necessities such as food, medication, housing, heat, electricity, and transportation. Similarly, in order for them to pay hundreds, or even thousands, of dollars in increased expenses under the Aetna MAP, they will have to substantially reduce their spending on necessities. These elderly and disabled individuals are also suffering anxiety and distress over the City's plan to force them off of their existing health insurance, and will suffer even more anxiety and distress if that plan is implemented.

83. Petitioner-Plaintiff the NYC Organization of Public Service Retirees, Inc. ("the Organization") is a not-for-profit organization incorporated in the State of New York and registered with the New York State Secretary of State and the Office of the Attorney General. Its purpose is to advocate for the healthcare rights of retired New York City workers and their dependents. It has many thousands of members and its President is Marianne Pizzitola.

84. As a not-for-profit, the Organization is dedicated to protecting the healthcare rights and preserving the healthcare benefits of New York City retirees, and ensuring that elderly and disabled retirees receive accurate, timely information about their benefits.

85. Tens of thousands of senior citizens and disabled retirees rely on the Organization for access to accurate information; information that is often unavailable from the City or Retirees' former unions.

86. Since at least March 2023, when Respondents first announced their plan to eliminate Medicare Supplemental insurance, the Organization has fielded countless inquiries from anxious, confused, concerned Retirees. Providing accurate information to these distressed seniors has required countless hours of effort by Organization volunteers.

B. Respondents-Defendants

87. Respondent-Defendant the City of New York is the Retirees' former employer. It is legally obligated to provide Retirees with certain healthcare benefits, and its ongoing attempt to avoid those obligations is unlawful.

88. Respondent-Defendant Eric Adams is the Mayor of New York City. Mayor Adams serves as the Chief Executive of the City of New York. In that role, Mayor Adams sets the agenda for the City and its finances, enforces all City and State laws, appoints heads of agencies, and oversees the New York City public school system.

89. Respondent-Defendant Office of Labor Relations ("OLR") is the City agency responsible for administering healthcare benefits to City employees, retirees, and their dependents through the NYC Health Benefits Program.

90. Respondent-Defendant Renee Campion is the commissioner of OLR.

91. Respondent-Defendant New York City Department of Education ("DOE"), also known as the Board of Education of the City School District of the City of New York, is the department of the government of New York City that manages the City's public school system.

92. Respondent-Defendant David C. Banks is the chancellor of DOE.

JURISDICTION

93. This Court has subject matter jurisdiction pursuant to New York CPLR §§ 301 and 7804(b).

94. This Court is also empowered to hear this case pursuant to CPLR § 901 because it is a class action and (1) the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable; (2) there are questions of law or fact common to the class which predominate over and questions affecting only individual members; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; (4) the representative parties will fairly and adequately protect the interests of the class; and (5) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

95. On April 24, 2023, Petitioners submitted a notice of claim to New York City Comptroller Brad Lander. At least 30 days have elapsed, and the Comptroller has not agreed to take any corrective action in response to that claim.

96. On April 25, 2023, Petitioners submitted a notice of a claim to the Department of Education. At least 30 days have elapsed, and the Department of Education has not agreed to take any corrective action in response to that claim.

97. On May 16, 2023, Marianne Pizzitola, on behalf of the Organization, sent a demand letter to OLR Commissioner Campion, demanding that Respondents (1) immediately cease implementation of their planned healthcare overhaul; (2) immediately halt the transfer of

Medicare-eligible retired City employees and their Medicare-eligible dependents from their existing health insurance plan into the new Aetna MAP; (3) permit Medicare-eligible retired City employees and their Medicare-eligible dependents to remain enrolled in their existing health insurance plan; (4) immediately announce that Medicare-eligible retired City employees and their Medicare-eligible dependents need not opt out of the new Aetna MAP by June 30, 2023; (5) cease and desist from disseminating false or misleading information about the new Aetna MAP; and (6) immediately meet with the Organization – and other lawful representatives of the retiree community – in order to ensure a smooth and lawful continuation of Retirees' existing healthcare benefits. As of May 31, 2023, Respondents have not responded.

98. Pursuant to General Business Law § 340, Petitioners are concurrently serving notice upon the New York Attorney General.

99. This Court has personal jurisdiction over Respondents because they can be found, reside, and/or transact business in New York State.

VENUE

100. Venue is proper in this Court because Respondents are residents of New York County, and OLR and DOE are headquartered here.

ARTICLE 78

101. A special proceeding under Article 78 of the CPLR is available to challenge the actions or inaction of agencies and officers of state and local government. Under CPLR § 7803, a Court may determine, *inter alia*, "whether the body or officer failed to perform a duty enjoined upon it by law," and "whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion."

102. Under CPLR § 7806, a judgment under Article 78 "may grant the petitioner the relief to which he is entitled."

FACTUAL BACKGROUND

103. Petitioners and the class members (collectively, the "Retirees") are Medicare-eligible retired City workers and their Medicare-eligible dependents. Most are senior citizens over the age of 65. Others are under age 65 with disabilities that qualify them for Medicare.[4] The Retirees are eligible for a pension and retirement benefits because they, or their immediate family member, satisfied the City's employment-longevity requirements.

104. The Retirees include former New York City firefighters, paramedics, police officers, teachers, and other civil servants who dedicated their lives to—and in many cases, risked their lives for—this City.

105. City employment has many downsides. It generally involves grueling, thankless, and, in many cases, dangerous work, and the pay is much lower than in the private sector. Pizzitola Aff. at ¶ 8.

106. Even in retirement, most Retirees can barely make ends meet. Over 70,000 retired City workers survive on pensions of less than $1,500 a month; nearly 100,000 survive on less than $2,000; and over 150,000 survive on less than $3,000. Barrios-Paoli Aff. at ¶ 33; Pizzitola Aff. at ¶ 8.[5]

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[4] There are also numerous other New York City municipal retirees who are not part of this lawsuit because they are under the age of 65 and are not Medicare-eligible.

[5] *See also* 2021 NYC pension data compiled by the Empire Center, https://perma.cc/YV67-V895; *see also* New York City Office of the Actuary, Annual Comprehensive Financial Reports for the five New York City Retirement Systems, https://perma.cc/BU2Y-YJ97; Testimony of NYC Comptroller Alan G. Hevesi to the City Council Committee on Government Operations, January 31, 2000, https://www.laguardiawagnerarchive.lagcc.cuny.edu/pages/FileBrowser.aspx?LinkToFile=FILES_DOC/Microfilms/05/011/0000/00001/052429/05.011.0000.00001.052429.10392001.PDF at 67-68

107. However, City workers, unlike their private sector peers, could always rest easy knowing that when they retired and became elderly or disabled, the City would take care of them by providing high-quality, hassle-free healthcare through Medicare plus Supplemental (also known as "Medigap") insurance.

108. The guarantee of Medicare plus Supplemental insurance is a financial and psychological lifeline. Indeed, this guarantee is one of the main reasons many Retirees entered civil service in the first place, and what kept many from leaving despite the stress, low pay, and, in many cases, physical danger. Pizzitola Aff. at ¶ 9; *see also* Pizzitola Aff., Ex. 1.

I. Background on Medicare and Medicare Advantage

A. How Medicare Works

109. Medicare, which came into existence in 1966, is available to (1) people who are 65 years or older, and (2) those under the age of 65 who suffer from certain illnesses and/or disabilities.

110. When a person becomes eligible for Medicare, they must enroll in the Medicare program even if they choose not to take advantage of it. The City requires active employees and retirees to enroll in Medicare once they become eligible.

111. Medicare has four parts. Each covers a slightly different set of benefits, and each part is funded differently. Medicare Part A covers hospitalization and is paid for by the federal government. Medicare Part B covers outpatient treatment and medical services. It is optional. The federal government pays for part of Medicare Part B, but individuals must pay a monthly premium. Part D is a drug benefit, is optional, and is paid for partly by the federal government and partly by the individual. The amount paid by the individual depends on the individual's income.

112. Part C is known as Medicare Advantage. It is a combination of Parts A, B, and sometimes D. The federal government pays most of the cost of Medicare Advantage, with some contribution made by the individual or a former employer. Medicare Advantage is administered by private insurance companies.

113. "Traditional Medicare" consists of Part A and Part B. In traditional Medicare, the federal government pays for 80% of hospital and doctor costs. The individual must cover the remaining 20% of medical expenses.

114. For decades, insurance companies have offered Medicare "Supplemental" or "Medigap" insurance plans to cover the uncovered 20%. These plans are popular and are widely considered to be essential.

115. The U.S government describes these plans as follows: "A Medigap policy is health insurance sold by private insurance companies to fill the 'gaps' in Original Medicare Plan coverage. Medigap policies help pay some of the health care costs that the Original Medicare Plan doesn't cover."[6]

116. Almost every medical provider in the United States accepts traditional Medicare and Medicare Supplemental insurance. Barrios-Paoli Aff. at ¶ 37; Burns Aff. at ¶ 14; Omdahl Aff. at ¶¶ 37, 63; Pizzitola Aff. at ¶ 12; Pizzitola Aff., Ex. 16.[7]

117. For more than 50 years, New York City has offered its Medicare-eligible Retirees a selection of multiple Medicare Supplemental plans.

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[6] *Medigap (Medicare Supplement Health Insurance)*, Centers for Medicare & Medicaid Services, https://perma.cc/PG6L-SQZP.

[7] *See also*, *e.g.*, Centers for Medicare & Medicaid Services, *Annual Medicare Participation Announcement,* March 25, 2022, https://perma.cc/SNE7-5V2Y (explaining that "98% of providers participate in [traditional] Medicare").

118. The City also reimburses Medicare-eligible Retirees for their Medicare Part B premiums, *provided that* Retirees are enrolled in a City health plan.

119. The standard monthly premium for Medicare Part B enrollees is $164.90 per month in 2023, or $1,978.80 per year.[8]

120. The vast majority of the City's Medicare-eligible Retirees are enrolled in a Medicare Supplemental plan known as the Senior Care plan ("Senior Care"). Senior Care is administered by EmblemHealth, which is a not-for-profit health insurer.[9]

121. In 2008, the City argued against the privatization of EmblemHealth "because it will result in lower quality of health care and service, diminished access to care and to insurance coverage at increased cost, a decline in the health of the population, and the weakened financial health of medical providers." Gardener Aff., Ex. O at Memo 1, 6.

122. The remaining minority of Retirees are enrolled in one of the dozen or so other plans that the City has long offered as part of the NYC Health Benefits Program.

123. Retirees overwhelmingly choose Senior Care for very clear reasons. One of the hallmarks of traditional Medicare is the free choice of a medical provider – an individual can see any provider across the country that accepts Medicare. And all medical providers who accept Medicare-eligible patients accept Senior Care. Senior Care is also simple to administer; there are no co-pays allowed for medical services; and there are no prior authorization protocols imposed or administered by private insurance companies.

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[8] *See, e.g.*, *See, e.g.,* Centers for Medicare & Medicaid Services, *2023 Medicare Parts A & B Premiums and Deductibles 2023 Medicare Part D Income-Related Monthly Adjustment Amounts,* September 27, 2022, https://perma.cc/9X4S-Z2KV.

[9] *See, e.g.*, EmblemHealth, *Our Story: Creating Healthier Futures, Together*, https://perma.cc/96QM-BCEY.

124. A small minority of other Retirees choose one of the other offered plans for a variety of reasons relevant to their individual circumstances.

125. Medical providers who provide services to patients under traditional Medicare—including Retirees who have Senior Care—are paid on a fee-for-service basis, with the amount of the payment established by the Center for Medicare Services ("CMS").

B. How Medicare Advantage Works

126. The Balanced Budget Act of 1997 created Part C, known then as the Medicare + Choice (M+C) program, effective January 1999. M+C was renamed Medicare Advantage under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

127. Medicare Advantage is a privatized—and vastly inferior—alternative to Medicare plus supplemental insurance.

128. Despite the similarities in name, Medicare Advantage is "different" from traditional Medicare plus a Medigap policy.[10] Medicare Advantage "plans are ways to get Medicare benefits, while a Medigap policy … supplements … Original Medicare benefits."[11]

129. Both Medigap and Medicare Advantage are "options for people with Medicare, but Medigap coverage supplements original Medicare, while Medicare Advantage is a private insurance alternative to federally run Medicare."[12] While Medicare Supplemental plans pay

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[10] *See, e.g.,* Centers for Medicare & Medicaid Services, *What is a Medicare Advantage Plan?*, April 2015 https://perma.cc/SF38-MZ9Z.

[11] *Id.* at 3.

[12] *See, e.g.,* AARP, *How are Medigap and Medicare Advantage different?,* January 24, 2023, https://perma.cc/U6MB-J2Y6.

secondary to original Medicare, Medicare Advantage plans become one's primary source of coverage when they enroll. Ryan Aff. at ¶ 9; Burns Aff. at ¶ 14.

130. Although the name "Medicare Advantage" might sound promising, it is anything but.[13] Under Medicare Advantage, a private, for-profit insurance company—not the federal government—controls one's health insurance benefits and access to care. The federal government pays these insurers a "capitated," or fixed, prospective amount to cover care for each enrollee based on the expected healthcare needs of that individual. 42 U.S.C. §§ 1395w-23, 1395w-25. Thus, Medicare Advantage plans make money based on the spread between what the federal government pays them for a given enrollee and what they spend on that enrollee. This creates strong incentives for insurers to maximize this spread, which they do in a number of ways.

131. Instead of operating on a fee-for-service basis like in traditional Medicare, Medicare Advantage plans negotiate payment rates and form networks with healthcare providers.

132. In practice, this means that Medicare Advantage plans do not offer the same level of choice as Medicare plus supplemental insurance. Most Medicare Advantage plans require their customers to go to their network of medical providers – a network that is typically very limited. Insurers minimize the amount they spend on enrollees by steering them to these preferred "in-network" providers who have contracted with the insurers to accept reduced rates. Archer Aff. at ¶¶ 8, 10; Omdahl Aff. at ¶ 42.

133. Medicare Advantage plans also impose co-pays and co-insurance amounts that are typically higher than those in traditional Medicare.

[13] *See, e.g.*, MyElder, *Medicare Advantage is an Oxymoron. More Disadvantages Than Advantages.,* November 23, 2022, https://myelder.com/medicare-advantage-is-an-oxymoron/.

134. Traditional Medicare has historically imposed no prior authorization requirements. Burns Aff. at ¶¶ 11-12; Ryan Aff. at ¶¶10-11; Barrios-Paoli Aff. at ¶¶15-18. Medicare Advantage, on the other hand, has strict prior authorization requirements.

135. Prior authorization is a process by which the private insurer – which maximizes profits by minimizing payments – will not provide coverage until it determines that a procedure or medication ordered by one's doctor is "medically necessary." In short, the private insurance company reserves the right and power to step between a doctor and their patient and overrule the treating doctor's judgment, determination of medical necessity, and prescription.

136. In practice, the process of prior authorization results in the frequent delay and denial of necessary – and even life-saving – care. Burns Aff. at ¶¶ 11-12; Barrios-Paoli Aff. at ¶¶ 15-18; Omdahl Aff. at ¶ 36.

137. In a recent physician survey conducted by the American Medical Association, 94% of respondents reported that prior authorization requirements caused delays in necessary treatment.[14] 33% reported that prior authorization has led to a "serious adverse event" for a patient in their care.[15] 25% reported that prior authorization led to a patient's hospitalization; 19% percent reported that prior authorization led to a life-threatening event or required intervention to prevent permanent impairment or damage; and 9% reported that prior authorization led to patient's disability/permanent bodily damage, congenital anomaly/birth defect, or death.[16]

[14] *See, e.g.,* American Medical Association, *2022 AMA prior authorization (PA) physician survey,* 2023, https://perma.cc/U2YU-8DGA.

[15] *Id.*

[16] *Id.*

138. In April 2022, the U.S. Department of Health and Human Services ("HHS") released a damning report revealing "widespread and persistent problems related to inappropriate denials of services and payment" caused by Medicare Advantage prior authorization requirements.[17] The report noted "millions of denials each year," which are so routine and unwarranted that 75% of denials that are appealed get reversed.[18] It also found that 13% of prior authorization requests denied by Medicare Advantage plans met Medicare coverage rules, and 18% of payment request denials met Medicare and Medicare Advantage billing rules.[19]

139. Three examples from the report—all of which occurred in a single week during a random sampling exercise—illustrate this impact:

a. A 72-year-old woman presented with a cancerous tumor in her breast.[20] Her Medicare Advantage plan denied the necessary surgery ordered by her doctor. That decision was reversed only after HHS happened to intervene.

b. An 81-year-old with uterine cancer was improperly denied a CT scan that was "needed to determine the stage of the cancer, whether it had spread, and to determine the appropriate course of treatment."[21]

c. A Medicare Advantage plan refused to admit a 67-year-old stroke victim to an inpatient rehabilitation facility even though he presented with an "acute right-sided ischemic stroke and [was] seen at the emergency department with new onset slurred speech."[22] The man "had difficulty swallowing, was at significant risk of aspiration and fluid penetration, at high risk for pneumonia, and, therefore," according to the Medicare

[17] U.S. Dep't of Health and Human Services, Office of Inspector General, *Some Medicare Advantage Organization Denials of Prior Authorization Requests Raise Concerns About Beneficiary Access to Medically Necessary Care*, April 2022, https://perma.cc/7TPN-Z6ZB ("HHS Report").

[18] *Id.* at 2, 9.

[19] *Id.* at 2, 3.

[20] *Id.*, Appendix B, Example D385.

[21] *Id.*, Example D421.

[22] *Id.*, Example D270.

> Benefit Policy Manual, "should have been under the frequent supervision of a rehabilitation physician."[23]

140. Prior authorization is not just dangerous for patients, it is also a major hassle for medical providers, because they have to complete the paperwork to obtain such authorization. Because of this hassle, and the reduced fees paid by Medicare Advantage plans, many doctors, hospitals, and continuing care facilities refuse to accept Medicare Advantage plans and the patients who have them. Archer Aff. at ¶ 9; Burns Aff. at ¶ 7-8; Potter Aff. at ¶ 18; Ryan Aff. at ¶ 28.

141. Virtually every major medical association, including the American Medical Association, has urged meaningful prior authorization reforms.[24]

142. The problem has become so extreme that Congress recently proposed bipartisan legislation to address it and is holding hearings right now to investigate it.[25]

C. Aetna is One of the Worst Offenders

143. Of the Medicare Advantage providers who abuse prior authorization, Aetna is one of the worst offenders.

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[23] *Id.*

[24] *See, e.g.,* February 13, 2023 Letter to Administrator of Centers for Medicare & Medicaid Services regarding "Meaningful Prior Authorization Reforms," https://searchlf.ama-assn.org/letter/documentDownload?uri=%2Funstructured%2Fbinary%2Fletter%2FLETTERS%2FPA-sign-on-letter-Part-C-and-D-rule.zip%2FPA-sign-on-letter-Part-C-and-D-rule.pdf.

[25] *See* Improving Seniors' Timely Access to Care Act, https://www.congress.gov/bill/117th-congress/house-bill/3173; Bob Herman and Casey Ross, *Senators probing largest Medicare Advantage plans over how algorithms factor in care denials*, STAT NEWS, May 17, 2023, https://perma.cc/DBJ4-AUM5.

144. In 2021, Aetna had the highest (12%) denial rate of all insurers, which is twice the national average (6%)—as well as the highest rate of appeals (20%) and second-highest rate of denials having to be overturned on appeal (90%).[26]

145. Multiple government investigations were recently launched into Aetna's prior authorization practices after a former medical director for the company admitted under oath that he never looked at patient records when deciding whether to approve or deny care.[27]

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. Health insurance costs New York City a great deal of money. In Fiscal Year 2021, the City spent approximately $9.5 billion on health insurance for active employees, retirees, and their dependents.[28] Approximately $3.2 billion was for Retirees, including both Medicare-eligible and non-Medicare-eligible retirees.

147. Not surprisingly, for many years the City has been looking for ways to save money on health insurance.

148. In or around 2018, the City and the Municipal Labor Committee ("MLC") agreed that the City would seek bids for an exclusive contract to provide Retirees with a Medicare Advantage plan ("MAP").

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[26] *See, e.g.,* KFF, *Over 35 Million Prior Authorization Requests Were Submitted to Medicare Advantage Plans in 2021*, February 2, 2023, https://perma.cc/L95K-WJ9W.

[27] *See, e.g.,* CNN, *California launches investigation following stunning admission by Aetna medical director*, February 11, 2018 https://perma.cc/T4DC-KG6W; *see also* Healthcare Dive, *Aetna prior authorization probed by 2 states*, February 14, 2018, https://perma.cc/XZ8M-TG5U.

[28] *See, e.g.,* The New School Center for New York City Affairs, *New York City Over-Pays for Health Insurance. City Workers Still Get a Bad Deal.,* January 20, 2021, https://perma.cc/PU5S-ELSY.

149. The City ultimately selected a proposal that was jointly submitted by the "Alliance" of EmblemHealth and Anthem. Aetna also submitted a bid, which was rejected.

150. On or about July 14, 2021, OLR announced on its website that the City was changing Retirees' health insurance and that, as of January 1, 2022, all Retirees who did not affirmatively opt out would be automatically disenrolled from their existing health insurance and enrolled in a newly created and materially inferior Medicare Advantage Plus Plan ("MAPP"), which was to be administered by two insurance companies, EmblemHealth and Anthem (collectively referred to as the "Alliance").

151. If Retirees wanted to remain in Senior Care, they were required to opt out of the MAPP and pay a monthly premium of $191.57 per person.

152. The Retirees challenged the implementation of the MAPP in a suit filed on September 26, 2021 against the City, OLR, and OLR Commissioner Renee Campion (collectively, the "City"). *See* Index No. 158815/2021, NYSCEF Doc. No. 1.

153. At approximately the same time, Aetna also sued the City to halt implementation of the MAPP and invalidate the contract with the Alliance. *See* Index No. 158216/2021, NYSCEF Doc. No. 1.

154. On October 21, 2021, this Court granted a preliminary injunction halting the implementation of the MAPP. Index No. 158815/2021, NYSCEF Doc. Nos. 112, 113, 114.

155. On March 3, 2022, this Court permanently enjoined the City "from passing along any costs of the New York City retirees' current plan to the retiree." Index No. 158815/2021, NYSCEF Doc. No. 216.

156. On March 8, 2022, the City filed an appeal in the Appellate Division, First Department. Case No. 2022-01006, NYSCEF Doc. No. 1.

157. The First Department unanimously affirmed this Court's decision on November 22, 2022. Case No. 2022-01006, NYSCEF Doc. No. 40.

158. The City has now adopted a new scheme to avoid its legal obligations: eliminate Retirees' choice of health insurance – and in particular, Medicare plus Supplemental insurance – altogether. This scheme, like the City's previous one, is unlawful.

B. The City Imposes Co-Pays

159. After this Court issued a preliminary injunction prohibiting the City from passing along any costs of Senior Care to Retirees, the City decided to circumvent that ruling by imposing contractually forbidden co-pays on Retirees.

160. Beginning in January 2022, Retirees who were enrolled in Senior Care were suddenly charged co-pays for medical services.

161. On November 29, 2022, the Retirees filed suit against the City, OLR, Group Health Incorporated ("GHI"), and EmblemHealth (collectively, the "Co-pay Respondents") to halt the illegal imposition of co-pays. Index No. 160234/2022, NYSCEF Doc. No. 1.

162. On January 11, 2023, this Court granted a preliminary injunction enjoining the imposition of co-pays on Retirees. Index No. 160234/2022, NYSCEF Doc. No. 60. On May 25, 2023, the First Department unanimously affirmed. Case No. 2023-00232, NYSCEF Doc. No. 18.

C. The City's Contract with Aetna

163. The Alliance withdrew from offering the MAPP after this Court enjoined its implementation in 2022.

164. Without rebidding the proposal, the City negotiated a new MAP with Aetna.

165. On March 10, 2023, OLR Commissioner Renee Campion, on behalf of OLR, sent Retirees a letter informing them that "[t]he City of New York, working with the Municipal Labor Committee (MLC), intends to implement a Medicare Advantage program for City retirees and

their eligible dependents age 65 and over as of September 1, 2023." Gardener Aff., Ex. A ("March 10, 2023 Letter"). The letter added: "The new program … will be provided by Aetna [and] is currently undergoing the remaining steps of the City's contract approval process." *Id*.

166. According to OLR, on September 1, 2023, "the City will discontinue the Senior Care Plan and all [ten] other retiree plans," and will automatically enroll all Medicare-eligible retirees and Medicare-eligible dependents in a new Aetna Medicare Advantage plan (the "Aetna MAP"). *Id*. 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. *Id*.; Pizzitola Aff. at ¶ 26.

167. On March 30, 2023, Mayor Adams and Commissioner Campion announced the official signing of the Aetna MAP contract.[29]

168. The Aetna MAP contract will be in effect for at least five years. *Id.*

169. The City will no longer offer *any* Medicare Supplemental insurance options. If Retirees wish to remain on Medicare plus supplemental insurance, they will have to waive City health coverage entirely, meaning they will have to pay the Medicare Part B premium and IRMAA themselves, and will have to find and pay for their own Medicare Supplemental plan on the open market (assuming they can get one).

170. The only other plan that the City will offer is another Medicare Advantage plan known as HIP VIP. HIP VIP is available only to those Retirees living in the City or five nearby counties (Nassau, Suffolk, Westchester, Rockland, and Orange).[30] It is a highly restrictive, HMO-style insurance plan with a limited network of medical providers that enrollees must stay within.

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[29] *See, e.g.,* The Official Website of the City of New York, *Mayor Adams, OLR Commissioner Campion Announce Signing Of Medicare Advantage Contract,* March 30, 2023, https://perma.cc/W3UY-H7CL.

[30] *See, e.g.,* The Official Website of the City of New York, *Major Benefit Comparison: Senior Care, HIP VIP Premier Medicare Advantage HMO, and Aetna Medicare Advantage PPO,* 2023,

171. The majority of Retirees therefore have a single option: the Aetna MAP.

D. Countless Providers Will Not Accept the Aetna MAP

172. The Respondents have repeatedly told Retirees that their medical providers will accept the Aetna MAP. That is false.

173. The Aetna MAP has a limited network of medical providers. As the City's contract with Aetna states, "health care providers and suppliers that are not contracted with [Aetna] to participate in the Provider Network are not required to accept the Plan and furnish Covered Benefits to Members." Gardener Aff., Ex. C, at Attachment F § 7.0.

174. These medical "providers that do not contract with [Aetna] are under no obligation to treat [Retirees], except in emergency situations." Gardener Aff., Ex. D at Chapter 3 § 2.3; *see also* Gardener Aff., Ex. M at 2 ("With the City of New York Retiree Aetna Medicare Advantage PPO plan, you get the freedom to see any licensed provider, as long as they are eligible to participate in Medicare and *accept your Aetna Medicare Advantage PPO plan*." (emphasis added)).

175. Countless doctors, hospitals, and continuing care facilities have already decided they will not accept the Aetna MAP, and others could decide at any time not to accept it. Pizzitola Aff., Ex. 1; Archer Aff. at ¶ 9; Burns Aff. at ¶ 7-10; Barrios-Paoli Aff. at ¶¶ 13, 37, 39; Ryan Aff. at ¶ 13.

176. Many continuing care facilities not only will not accept the Aetna MAP, they also specifically require residents to maintain Medicare plus Supplemental insurance. *See, e.g.*, Miller Aff. at ¶¶ 4, 6-7; Archer Aff. at ¶ 14; Ryan Aff. at ¶ 12; Forbes-Wolfe Aff. at ¶¶ 4, 9.

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https://perma.cc/8M7H-GSFM; *see also,* The Official Website of the City of New York, *VIP® Premier (HMO) Medicare plan,* https://perma.cc/M2JF-DL27.

177. Retirees whose medical providers do not accept the Aetna MAP will likely have to find new providers. In the case of continuing care facilities, this means moving to a new facility – in other words, a new home.

E. Retirees Bear the Burden of Payment

178. Various scenarios under the Aetna MAP mandate that, "when [a Retiree] get[s] medical care, [s/he] may need to pay the full cost." Gardener Aff., Ex. D at 37-38 (Chapter 5, § 1).

179. For example, medical providers can refuse to bill Aetna even if they agree to see patients enrolled in the Aetna MAP. *See* Gardener Aff., Ex. K (explaining that "[i]f the provider refuses to bill the plan directly, you can still keep that appointment with the provider, but you will have to pay the provider's bill"). When that happens, Retirees will have to pay for their own medical care, which (depending on the care) could be thousands of dollars. *See, e.g.*, Omdahl Aff. at ¶ 26.

180. Even if Aetna eventually reimburses Retirees for these costs – after Retirees successfully navigate Aetna's burdensome reimbursement request process – very few Retirees have the cash on hand to front the extraordinary cost of their medical care. Pizzitola Aff. at ¶¶ 8, 48. And if Retirees fail to meet Aetna's strict reimbursement request deadlines and confusing procedural hurdles, they will not be entitled to any reimbursement. Gardener Aff., Ex. D at 37 (Chapter 5 § 1) (noting requirements "that you must meet to get paid back"), 39 (Chapter 5 § 3.1) ("If we decide that the medical care is *not* covered, or you did *not* follow all the rules, we will not pay for our share of the cost." (emphasis in original))].

F. The Aetna MAP Requires Prior Authorization

181. Retirees will not be covered for a wide range of medical services and medications unless Aetna first deems them "medically necessary." Gardener Aff., Ex. C at § 12.

182. For the first two years of the contract, the City has agreed to pay Aetna $15 per Retiree per month to limit the number of services and medications subject to this prior authorization requirement. *Id*. at § 12.2.

183. However, even during that initial period, many critical – and common – services and medications still require Aetna's prior authorization, which Aetna is (in)famous for denying.[31]

184. After the initial period, there is no limit to the list of services and medications that may be subject to Aetna's prior authorization. *Id*. at § 12.1, 12.2.

185. Out-of-network doctors, moreover, are under no obligation to seek prior authorization before performing services that require it. *Id*. at § 12 ("Non-contracted providers are not required to seek Prior Authorization for services from [Aetna.]").

186. Given the administrative burden of seeking prior authorization, many doctors are unlikely to do so because it is not required. Potter Aff. at ¶ 18; Pizzitola Aff. at ¶ 20. However, a doctor's failure to seek prior authorization before providing services will not stop Aetna from denying coverage if Aetna later decides that these services were not medically necessary. Gardener Aff., Ex. C at § 12 (noting that, even if a provider fails to seek prior authorization, Aetna "reserves the right to retrospectively review claims submitted by non-contracted providers and may deny coverage if the services are not medically necessary and/or not covered under the MA plan").

187. This creates enormous financial risk for Retirees. In the absence of a positive "coverage decision, if [Aetna] later determine[s] that the services are not covered or were not

[31] These services include: acute hospital inpatient services; long-term acute care; acute physical rehabilitation; skilled nursing facility services; home care services; a long list of medications; various unidentified therapies, procedures, services, and technologies to be agreed to by Aetna and the City; all services that are not covered by Medicare; cosmetic services; and services that could be considered experimental and investigational in nature. Gardener Aff., Ex. C at § 12.2.

medically necessary, [Aetna] may deny coverage and [Retirees] will be responsible for the entire cost." Gardener Aff., Ex. D at 21 (Chapter 3 § 2.3). In other words, if a Retiree sees an out-of-network doctor who fails to obtain prior authorization before providing care, that Retiree will have to pay for that care herself if Aetna later decides it was not medically necessary.

G. The Aetna MAP Imposes Co-Pays

188. Senior Care does not permit co-pays for medical services.[32] Under the Aetna MAP, however, Retirees will have to pay $15 co-pays for a variety of medical services, including specialist visits. Pizzitola Aff. at ¶¶ 29, 50; Gardener Aff., Exs. C, D.

189. Retirees will also face significantly increased prescription drug costs under the Aetna MAP.

190. Under Senior Care, retirees have had the option to buy either the GHI Enhanced Medicare Prescription Drug Plan ("Senior Care Drug Rider")[33] or a drug rider on the open market. Pizzitola Aff. at ¶ 33. The premium for the Senior Care Drug Rider is $125 per month. *Id.* Many other plans on the open market are even less expensive, with costs ranging from approximately $11 (ironically, for Aetna's current version of SilverScript) to $75 per month. *See, e.g.*, *id.*; *id.*, Ex. 1 at Bollacke Aff. ¶ 5; *id.*, Ex. 1 at Carroll Aff. ¶ 11 (monthly cost of current drug plan, which is Aetna SilverScript, is $10.60 per month).

[32] In 2022, the City and EmblemHealth began to unlawfully impose co-pays on retirees enrolled in Senior Care. However, because the Senior Care contract prohibits co-pays for medical services, this Court enjoined the continued imposition of co-pays. *See Bianculli v. City of New York Office of Labor Relations*, No. 160234/2022, 2023 WL 158773, at *3 (N.Y. Sup. Ct. Jan. 11, 2023). On May 25, 2023, the First Department unanimously affirmed.

[33] *See, e.g.*, EmblemHealth, EmblemHealth City of New York 2023 GHI Enhanced Medicare Prescription Drug Plan (PDP), 2023, https://perma.cc/M29Y-UFA7.

191. Under the Aetna MAP, however, retirees *must* buy the Aetna Medicare Rx offered by SilverScript ("Aetna SilverScript").[34] Retirees have no option to buy another drug rider on the open market. The Aetna SilverScript costs $135 per month, which is more expensive than the Senior Care Drug Rider and many other drug riders on the open market.

192. The cost of drugs under the Aetna SilverScript, moreover, is substantially higher than the cost of drugs under the Senior Care Drug Rider and other drug riders on the open market. Pizzitola Aff. at ¶ 33. For instance, the cancer drug Jakafi costs several times as much—thousands of dollars more—under the Aetna SilverScript as compared to the Senior Care Drug Rider. *See, e.g.*, Pizzitola Aff., Ex. 1, at Namm Aff. ¶ 5; *see also id.* at Tortorici Aff. ¶ 9 (monthly cost of Phentermine will rise from $2.62 to $28.58 and cost of Trulicity will increase from $199.81 to $251.44); *id.* at Bollacke Aff. ¶ 5 (noting $682/month increase in drug coverage cost under Aetna MAP); *id.* at Abdale Aff. ¶ 9 (explaining that the cost of abiraterone acetate pills will increase from $1,300/month under Senior Care Drug plan to $2,329.88/month under Aetna SilverScript).

193. There has been no comparable increase in prescription drug costs for active employees. Pizzitola Aff. at ¶ 33. In fact, the cost of prescription drug plans, and of the drugs themselves, will be cheaper for active employees than for Retirees. *Id*.

H. Opting Out is Not a Viable Option

194. Retirees who wish to maintain their current Medicare plus supplemental insurance must affirmatively opt out of the Aetna MAP between May 1 and June 30, 2023, and must try to purchase a Medigap plan on the open market before their existing coverage expires on September 1.

[34] *See, e.g.,* Aetna Medicare, *2023 Summary of Benefits Aetna Medicare Rx offered by SilverScript Employer PDP sponsored by City of New York,* 2023, https://perma.cc/6RS2-8JRT.

195. If Retirees choose to opt out of the Aetna MAP, the City will stop reimbursing them for the Medicare Part B premium and IRMAA. Retirees will also have to pay the entire cost of whatever Medigap plan they may be able to get on the open market – which will be many hundreds of dollars a month. Barrios-Paoli Aff. at ¶¶ 32, 47; Archer Aff. at ¶ 15; Burns Aff. at ¶ 20, 24; Omdahl Aff. at ¶ 93.

196. Paying hundreds of dollars a month for a Medigap plan is the *best*-case scenario.

197. Many Retirees will be denied Medigap coverage due to pre-existing conditions. Barrios-Paoli Aff. at ¶ 40; Burns Aff. at ¶¶ 15-20; Omdahl Aff. at ¶¶ 7, 63-65, 71, 76.

198. Only four states—Connecticut, Massachusetts, Maine, and New York—require Medigap plans to provide coverage for all beneficiaries in traditional Medicare ages 65 or older, regardless of medical history.[35] Burns Aff. at ¶ 15; Omdahl Aff. at ¶¶ 66-69. This is called "guaranteed issue." Burns Aff. ¶ 16; Omdahl Aff. at ¶ 65. Guaranteed-issue protections prohibit insurers from denying a Medigap policy to eligible applicants, including those with pre-existing conditions. Burns Aff. ¶ 16; Omdahl Aff. at ¶¶ 66-69.

199. Connecticut, Massachusetts, and New York have some form of continuous open enrollment; Maine requires insurers to issue a Medigap plan during an annual one-month open enrollment period.[36] Omdahl Aff. at ¶¶ 66-69.

[35] *See, e.g.,* KFF, *Medigap Enrollment and Consumer Protections Vary Across States*, July 11, 2018, https://perma.cc/NT96-TWQV.

[36] *Id.*

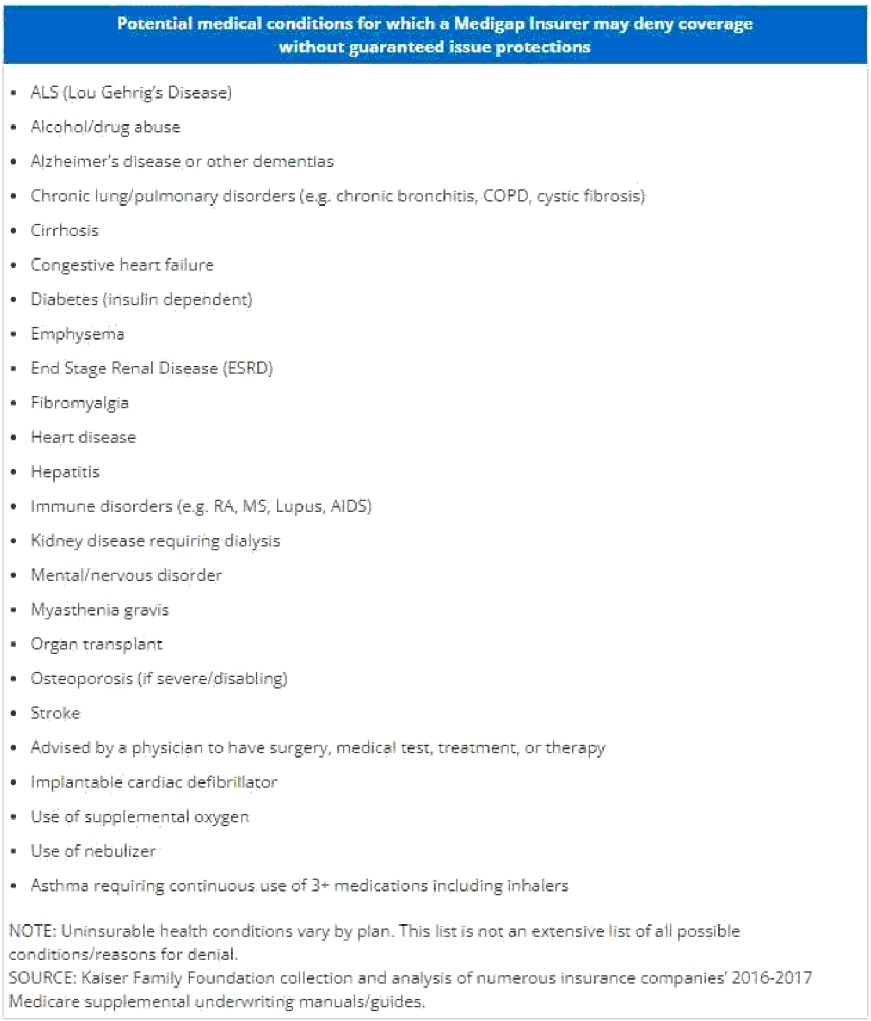
200. In all other states and the District of Columbia, insurers may deny a Medigap policy due to a pre-existing condition.[37] Barrios-Paoli Aff. ¶ 40; Burns Aff. at ¶ 17-18; Omdahl Aff. at ¶ 72.

201. Many Retirees have pre-existing conditions and have retired to states that do not have guaranteed-issue protections. Pizzitola Aff., Ex. 1.

202. Potential medical conditions for which a Medigap insurer may deny coverage without guaranteed-issue protections include, but are not limited to, the following:[38]

[37] *Id.*

[38] *Id.*; *see also* Omdahl Aff. at ¶ 81.



Potential medical conditions for which a Medigap Insurer may deny coverage without guaranteed issue protections

- ALS (Lou Gehrig's Disease)
- Alcohol/drug abuse
- Alzheimer's disease or other dementias
- Chronic lung/pulmonary disorders (e.g. chronic bronchitis, COPD, cystic fibrosis)
- Cirrhosis
- Congestive heart failure
- Diabetes (insulin dependent)
- Emphysema
- End Stage Renal Disease (ESRD)
- Fibromyalgia
- Heart disease
- Hepatitis
- Immune disorders (e.g. RA, MS, Lupus, AIDS)
- Kidney disease requiring dialysis
- Mental/nervous disorder
- Myasthenia gravis
- Organ transplant
- Osteoporosis (if severe/disabling)
- Stroke
- Advised by a physician to have surgery, medical test, treatment, or therapy
- Implantable cardiac defibrillator
- Use of supplemental oxygen
- Use of nebulizer
- Asthma requiring continuous use of 3+ medications including inhalers

NOTE: Uninsurable health conditions vary by plan. This list is not an extensive list of all possible conditions/reasons for denial.
SOURCE: Kaiser Family Foundation collection and analysis of numerous insurance companies' 2016-2017 Medicare supplemental underwriting manuals/guides.

203. Even in the four guaranteed-issue states, insurers are not required to provide Medigap coverage to Medicare-eligible individuals who are under the age of 65.[39] Burns Aff. at ¶ 17, 21-23; Omdahl Aff. at ¶ 88-89.

204. This means that many Retirees who are under the age of 65 but Medicare-eligible due to disability—including, among others, 9/11 first responders who are disabled as a result of their heroic actions on September 11, 2001—will likely be denied Medigap coverage on the open market. Archer Aff. at ¶ 17; Burns Aff. at ¶ 22; Barrios-Paoli Aff. at ¶ 40; Omdahl Aff. at ¶ 91.

[39] *Id.*

205. Even for Retirees who are able to get a Medigap plan on the open market, the cost may be prohibitively expensive: many policies cost many hundreds of dollars per month. Barrios-Paoli Aff. at ¶¶ 32, 47; Omdahl Aff. at ¶¶ 83, 92; Burns Aff. at ¶ 23.

206. Respondents have therefore thrust Retirees into an impossible situation: if the doctor treating a Retiree does not accept the Aetna MAP, the Retiree will have to opt out of the Aetna MAP to ensure continuity of care; but the Retiree may not be able to find a Medigap plan that will insure them (at least not for an affordable amount), thus leaving them uninsured at the very moment when they most need health insurance the most.

I. Retirees Lack Adequate and Accurate Information

207. Retirees also lack adequate and accurate information upon which to make an informed opt-out decision.

208. OLR promised Retirees they would receive "two comprehensive packages from Aetna with detailed information about the plan and resources available." Gardener Aff., Ex. A. Many Retirees have never received either promised package. Pizzitola Aff. at ¶ 36.

209. Many Retirees are in their 80s and 90s and rely exclusively on hard-copy documents, especially when making healthcare decisions. *Id.* They are generally not online and do not use social media. *Id.* Those of them who have not received the "comprehensive packages" lack information upon which to make an opt-out decision.

210. The information contained in these "comprehensive packages" is also misleading and inaccurate.

211. The Aetna MAP materials all promote the idea that Retirees will be able to keep their doctors if they enroll in the Aetna MAP. *See, e,g.*, Gardener Aff., Exs. J, K. They do not warn Retirees that countless doctors, hospitals, and continuing care facilities are refusing to accept the plan.

212. The Aetna materials urge Retirees to "Switch your plan, not your doctors," and claim that you can "continue seeing your doctors." Gardener Aff., Ex. J at 4. But doctors are consistently telling Retirees they will not accept the Aetna MAP. Pizzitola Aff. at ¶¶ 17, 20; Pizzitola Aff., Ex. 1.

213. The Aetna materials also fail to disclose the many ways in which the Aetna MAP is inferior to Retirees' existing Medicare-plus-supplemental insurance.

214. For example, Aetna's "Frequently Asked Questions" brochure poses the question, "What is different about this Aetna Medicare Advantage PPO plan compared to what I have now?" Gardener Aff., Ex. K at 4. The listed answer does not mention a single negative difference. *Id.* It boasts that the Aetna MAP is "an all-in-one plan [that] simplif[ies] your health care" and provides "additional benefits" compared to Medicare. *Id.* Nowhere does it mention the limited provider network, the many doctors who will refuse to accept the plan, the dangerous prior authorization requirements, the increased costs, or the myriad other downsides.

215. In response to another question, the brochure misleadingly states, "**There are no penalties or higher cost shares if you see providers who are outside of the Aetna Medicare network.**" *Id.* But out-of-network providers can choose to bill patients directly, Gardener Aff., Ex. D at 37-38, and patients of out-of-network providers are responsible for the entire cost of services later deemed medically unnecessary by Aetna, Gardener Aff., Ex. C at § 12.

216. Further, Aetna's brochure about prior authorization—a process that is foreign to most Medicare-eligible Retirees—completely misrepresents prior authorization. The brochure states that prior authorization is "needed" to "Keep you safe" and "Keep your costs down." Gardener Aff., Ex. L. It then proceeds to assure Retirees that "If your doctor thinks you need a service or medicine that requires prior authorization, they'll let us know. . . . You do not have to

do anything; your doctor will manage this process." *Id.* But out-of-network doctors have no obligation to seek prior authorization, and if they do not (which many likely will not), Retirees will have to pay the entire cost of any service or medicine that Aetna later deems medically unnecessary. Gardener Aff., Ex. D at 21 (Chapter 3, § 2.3).

217. Other Aetna materials contain similarly misleading, or false, statements and/or omissions. *See, e.g.,* Gardener Aff., Ex. K at 7 (stating that retirees "should encourage out-of-network providers to contact Aetna to ensure services are medically necessary or covered by Medicare," but failing to note the severe consequences of failing to do so).

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

218. The City has also made the process of opting out of the Aetna MAP confusing and challenging, if not impossible.

219. The Aetna MAP materials state that Retirees who "do not want to enroll in" the Aetna MAP must "opt out" between May 1 and June 30. Gardener Aff., Ex. K at 8.

220. A number of Retirees have already tried opting out by using the website listed in the informational materials, but due to a technical glitch, some continuously get an error message during the process. Pizzitola Aff. at ¶ 37.

221. However, for those Retirees who want to maintain Medicare plus supplemental insurance, opting out—even if the opt-out website worked—still would not help them.

222. Buried in an obscure OLR webpage is the statement that anyone "opting out of the Aetna Medicare Advantage PPO Plan … will automatically be enrolled in HIP VIP."[40] Thus, opting out of the Aetna MAP will just cause Retirees to be enrolled in HIP VIP, a highly restrictive Medicare Advantage plan, which is available only in a few select New York counties.

[40] New York City Office of Labor Relations, *Aetna Medicare Advantage PPO Plan*, https://perma.cc/AP89-HZG5.

223. In order to avoid being forced against their will into a Medicare Advantage plan, Retirees apparently must waive City health coverage, either in addition to or in lieu of opting out.

224. Confusingly, the OLR webpage communicates this by saying that "Retirees who do not wish to be enrolled in the Aetna Medicare Advantage PPO Plan or HIP VIP can waive City health coverage" by completing a special waiver form. *Id*. (emphasis added).

225. By using the word "can" instead of "must," the webpage suggests that waiver is optional, when in fact it appears to be mandatory. The waiver form compounds the confusion by stating in bold at the top: "This is not an Opt-out Form."[41]

226. Thousands of elderly Retirees are hopelessly confused by all of this and frightened that they will make a mistake. Pizzitola Aff. at ¶ 37. Among other points of confusion, they do not know whether they need to complete an opt-out form, a waiver form, or both. *Id.*

III. The Statutory Scheme and the City's Promises

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

227. Health insurance benefits for New York City active employees, retirees, and their dependents are guaranteed by statute.

228. Before the existence of Medicare, a Board of Estimate resolution required the City to "grant to all of its retired employees [and their dependents] . . . a choice of health plans" and to "assume full payment for such health and hospital insurance" up to the cost of the most expensive plan. Gardener Aff., Ex. H at 27.

229. After Medicare was enacted, the City continued to guarantee a choice of City-funded health insurance plans but modified its program so that the plans it offered to Medicare-

[41] New York City Office of Labor Relations, Retiree Special Enrollment/Waiver Form, https://perma.cc/6JSV-WWPL.

eligible retirees and dependents only supplemented, and did not duplicate, the benefits provided by Medicare. *Id*. at 22.

230. The City Council codified this healthcare guarantee in New York City Administrative Code § 12-126 ("Section 12-126," or "§ 12-126"). *Id*. at PDF p.9. Section 12-126 requires the City to pay the entire cost of health insurance for Retirees (as well as active employees and dependents). It states in relevant part: "The City will pay the entire cost of health insurance coverage for city employees, city retirees, and their dependents, not to exceed one hundred percent of the full cost of H.I.P.-H.M.O. on a category basis." N.Y.C. Admin. Code § 12-126(b)(1). In 2022, that H.I.P.-H.M.O.-based dollar cap for individual coverage was over $800 per month. There is a much higher cap for family coverage.

231. Section 12-126 defines "health insurance coverage" as "[a] program of hospital-surgical-medical benefits to be provided by health and hospitalization insurance contracts entered into between the city and companies providing such health and hospitalization insurance." *Id.* at § 12-126(a)(iv).

232. Section 12-126 also provides that the City will "reimburse" the cost of Medicare Part B premiums. *Id.*

233. The legislative history of § 12-126 underscores that the City intended "to grant to all of its retired employees … a choice of health plans" for which "the City shall assume full payment." Gardener Aff., Ex. H at 27-28.

234. Section 12-126 was originally enacted in 1967 through Local Law No. 120. The legislation was an exercise of the City's expanded powers under a 1965 amendment to General City Law § 20.

235. In a 1965 letter to the Governor, Mayor Robert Wagner requested that the Governor approve the state legislation and stated that "the object of this bill is to … enable cities with a population of one million or more … to offer a wider *choice* of health insurance plans to their officers, employees and retirees and to assume as an employer expense, all or part of the cost of such plans as may be deemed proper." Gardener Aff., Ex. H at 76 (emphasis added).

236. The 1965 resolution announcing these benefits used language nearly identical to that of § 12-126, which was passed shortly thereafter. The resolution – Resolution Calendar No. 292 – stated, in relevant part: "it is the desire and intent of the City of New York to grant to all of its retired employees … a choice of health plans … and the City shall assume full payment for such health and hospital insurance …." *Id*. at 27.

237. The choice of health insurance plans envisioned by § 12-126 was a choice of Medicare Supplemental insurance.

238. Notably, when, in August 1967, then-Mayor Lindsay discussed the bill that would become § 12-126, he referred to the healthcare coverage for Medicare-eligible retirees as "the Medicare supplement." Gardener Aff., Ex. I.

239. Section 12-126's authorizing statute, New York State General City Law § 20(29-b) – which was passed contemporaneously with § 12-126, at the City's behest – empowers the City to pay the "for premium charges for *supplementary* medical insurance benefits under the federal old-age, survivors and disability insurance benefit program." (emphasis added).

240. Medicare Advantage did not exist until decades after the statute was passed – further underscoring that § 12-126 was intended to require the City to pay for Medicare Supplemental insurance.

241. In the nearly three decades since Medicare Advantage was implemented, the City Council has never substantively amended § 12-126, and the City has continued to offer, and pay for, Medicare Supplemental insurance plans.

242. As part of its effort to strip Retirees of legally guaranteed healthcare rights, the Respondents have repeatedly pressured the City Council to amend § 12-126 to no longer require the City to cover the entire cost of Medicare supplemental plans for Retirees. Pizzitola Aff. at ¶ 22.[42]

243. But the City Council has *not* amended § 12-126, and the same version of § 12-126 that was promulgated in 1967 remains in full force.

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. Since the enactment of § 12-126, the City has not only provided active and retired City workers and their dependents with fully paid-for Medicare Supplemental insurance through the New York City Health Benefits Program, it has also explicitly promised them that it would do so.

245. The authoritative source of information about the Health Benefits Program is a handbook published by the City called the Summary Program Description ("SPD"). For over 50 years, the City has used the SPD as the primary tool to inform active and retired City workers and their dependents of the healthcare benefits they are entitled to under the Health Benefits Program.

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[42] *See also* Oct. 28, 2022 Letter from Renee Campion to Harry Nespoli, *available at* https://perma.cc/D6MC-DLQL; Chris Sommerfeldt, *NYC Council has no plan to pass bill that would let Mayor Adams charge retired city workers for healthcare: 'It's dead'*, NEW YORK DAILY NEWS, Jan. 19, 2023, https://perma.cc/A8PW-4N6L.

Before the internet, the City would mail copies of the SPD to all employees and retirees and make copies publicly available. Today, the City publishes the current version on the OLR website.

246. Employees, retirees, and their dependents have always relied on the SPD when evaluating their healthcare rights and health insurance options. Pizzitola Aff. at ¶ 14. In fact, the City has repeatedly told them to do so. For instance, the City has instructed them: "Review this [SPD] as carefully as possible. You will find that it is a valuable resource . . . as a comprehensive guide to understanding your health benefits before you need to use them." Pizzitola Aff., Ex. 10 at 3. Readers were also advised: "This Summary Program Description provides you with a summary of your benefits under the New York City Health Benefits Program. Health insurance and the health care system can be complicated and confusing. This booklet was developed to help you to understand your benefits . . . ." Pizzitola Aff., Ex. 12 at 1.

247. Every single year for the past half-century, the City repeatedly informed all of its employees and retirees in countless written and verbal communications that when they and their dependents became Medicare-eligible, they would be entitled to City-funded healthcare through a combination of Medicare plus Medicare supplemental insurance.

248. Since the passage of Medicare nearly 60 years ago, every single SPD published by the City has promised workers that, when they retired and became Medicare-eligible, the Health Benefits Program would offer them City-funded health insurance coverage through a combination of Medicare plus Medicare supplemental insurance, and every SPD has listed multiple Medicare supplemental options for Retirees to choose from. Indeed, the SPDs stated that providing Medicare supplemental insurance was a defining feature of the Health Benefits Program. This promise was so important, many Retirees saved the first SPDs they received decades ago as

conclusive proof of the healthcare they were entitled to upon their retirement. Pizzitola Aff. at ¶ 14.

249. SPDs from the 1970s provided as follows:

> **NEW YORK CITY'S HEALTH PROGRAM PICKS UP WHERE MEDICARE LEAVES OFF**
>
> **At age 65+ (and thereafter), your first level of health benefits is provided by MEDICARE. The City's Health Insurance Program provides a second level of benefits intended to fill certain gaps in Medicare coverage**. . . . ***The City's Health Program supplements MEDICARE but does not duplicate benefits which are available under MEDICARE***.

Pizzitola Aff., Ex. 2 at Cover Page and 2-3.[43]

250. This same promise of Medicare plus supplemental insurance was made in every subsequent SPD published by the City. Like the SPDs from the 1970s, SPDs from the 1980's stated:

> **At age 65 (and thereafter) …, your first level of health benefits is provided by Medicare. The City's Employee Health Benefits Program provides a second level of benefits intended to fill certain gaps in Medicare coverage**. . . . **The City's Employee Health Program supplements Medicare but does not duplicate benefits which are available under Medicare**.

Pizzitola Aff., Ex. 3 at 12-13.

251. The City continued to make this exact same promise throughout the 1990s, even after Medicare Advantage officially came into existence in 1997. These SPDs, like their predecessors, stated:

> **City Coverage for Medicare-Eligible Retirees**
>
> **When you or one of your dependents becomes eligible for Medicare at age 65 (and thereafter) or through special provisions of the Social Security Act for the Disabled, your first**

[43] Although SPDs from the late 1960s contained this same promise, Petitioners have not yet located documents that far back.

> **level of health benefits is provided by Medicare. The Health Benefits Program provides a second level of benefits intended to fill certain gaps in Medicare coverage. . . . [T]he City's Health Benefits Program supplements Medicare but does not duplicate benefits available under Medicare.**

Pizzitola Aff., Ex. 7 at 49; *see also id.*, Ex. 4 at 39; *id.*, Ex. 5 at 46; *id.*, Ex. 6 at 47.

252. The SPDs from the 2000s contained this same promise:

> **City Coverage for Medicare-Eligible Retirees**
>
> **When you or one of your dependents becomes eligible for Medicare at age 65 (and thereafter) or through special provisions of the Social Security Act for the Disabled, your first level of health benefits is provided by Medicare. The Health Benefits Program provides a second level of benefits intended to fill certain gaps in Medicare coverage. . . . The City's Health Benefits Program supplements Medicare but does not duplicate benefits available under Medicare.**

Pizzitola Aff., Ex. 9 at 51; *see also id.*, Ex. 8 at 51; *id.*, Ex. 10 at 14; *id.*, Ex. 11 at 15.

253. This promise continued unabated throughout the next decade as well, as SPDs published in the 2010s stated:

> **City Coverage for Medicare-Eligible Retirees**
>
> **When you or one of your dependents becomes eligible for Medicare at age 65 (and thereafter) or through special provisions of the Social Security Act for the Disabled, your first level of health benefits is provided by Medicare. The Health Benefits Program provides a second level of benefits intended to fill certain gaps in Medicare coverage. . . . The City's Health Benefits Program supplements Medicare but does not duplicate benefits available under Medicare.**

Pizzitola Aff., Ex. 12 at 14; *see also id.*, Ex. 13 at 14; *id.*, Ex. 14 at 14; *id.*, Ex. 15 at 14.

254. The City has repeated this promise all the way to the present decade, as SPDs in the 2020s stated: "**CITY COVERAGE FOR MEDICARE-ELIGIBLE RETIREES: The City's Health Benefits Program supplements Medicare but does not duplicate benefits available under Medicare**." *Id.*, Ex. 16 at 19. *See also id.*, Ex. 17 at 19.

255. Nowhere in these SPDs did the City qualify its promise by warning employees that someday, when they became eligible for Medicare, the City might suddenly deny them access to Medicare and Medicare supplemental insurance, or that it might force them into a Medicare Advantage plan. Up until now, such a drastic and unlawful maneuver was unthinkable.

256. The promise of Medicare plus supplemental insurance was made not only in SPDs. The City repeated this promise in countless other documents relied on by employees and retirees. Although these documents are too numerous to catalogue, we offer a few representative examples.

257. One such example is a list of frequently asked questions regarding retiree healthcare published by the City's Office of Human Resources Solutions. Pizzitola Aff., Ex. 18. Question number eight asked: "What do I do when I and/or my dependent becomes eligible for Medicare?" *Id*. at 3. The listed answer repeats the promise made in the SPDs:

> **When you or one of your dependents becomes eligible for Medicare at age 65 (and thereafter) or through special provisions of the Social Security Act for the Disabled, your first level of health benefits is provided by Medicare. The Health Benefits Program provides a second level of benefits intended to fill certain gaps in Medicare coverage. . . . The City's Health Benefits Program supplements Medicare but does not duplicate benefits available under Medicare.**

Id.

258. Likewise, "Summary of Benefits" booklets published over the years by individual City agencies stated: "**If you are a Medicare-eligible retiree, Medicare provides your first level of health benefits. The Health Benefits Program provides a second level of benefits intended to fill certain gaps in Medicare coverage**." Pizzitola Aff., Ex. 19 at 7. Similarly, myriad pension-related manuals and handbooks stated that when retirees turn 65, "**Medicare becomes <u>Primary</u>, and the City coverage is continued as supplemental**." *Id.*, Ex. 20 at 6; *id.*, Ex. 21 at 3.

259. Based on the City's clear and repeated promise, the City's labor unions have consistently advised their members that when they retired and became eligible for Medicare, they would be entitled to Medicare plus supplemental insurance. *See, e.g.*, Pizzitola Aff., Ex. 22 at 1-2 (**"When you sign up for Medicare, your city-provided health plan automatically becomes a Medicare supplement (sometimes called a Medi-Gap policy) …. NYC municipal retirees do not need to purchase any additional coverage, since their city coverage becomes the Medicare supplement automatically**.") (emphasis added); *id.*, Ex. 23 at 59 (explaining that "**[w]hen you become eligible for Medicare, . . . Medicare becomes your primary provider and your city plan becomes your secondary carrier," meaning that "your city plan fills in some of the gaps" of Medicare**) (emphasis added). Union representatives are agents of the City in this context because the City has tasked them with informing members of their healthcare rights and benefits. Pizzitola Aff. at ¶ 15.

260. The City's healthcare promise was not just communicated in writing. City officials and human resource officers also verbally assured employees over the years that, if they served the City for the statutorily required amount of time, they and their dependents would be entitled to Medicare plus supplemental insurance when they became eligible for Medicare. Pizzitola Aff. at ¶¶ 14; Pizzitola Aff., Ex. 1; Barrios-Paoli Aff. at ¶¶ 27-28. This is confirmed by scores of affidavits, both from individuals who were made this promise *and* City officials who communicated the promise. *Id*. Indeed, former City Commissioner Lilliam Barrios-Paoli, who served four different mayors in various leadership roles, including as head of the Departments of Employment, Personnel, and Human Resources Administration, testified that "[e]very year for more than 50 years," City officials (including herself) told employees and retirees they would be entitled to Medicare plus a choice of Medicare supplemental plans when they became Medicare-

eligible. Barrios-Paoli Aff. at ¶¶ 19, 27-28. Commissioner Barrios-Paoli further testified that the City used this promise as "an essential recruiting and retention tool." *Id.* at ¶ 27.

261. In sum, for over 50 years, the City's promise of Medicare plus supplemental insurance has been clear, consistent, unqualified, and ubiquitous. This promise was made to all current Retirees *before* they accepted employment with the City, *during* their employment with the City, and *after* their employment with the City. And, up until today, the City has always honored this promise. Since the introduction of Medicare in the 1960s, every single retired City worker has been given the option of enrolling in Medicare plus one of several City-funded Medicare supplemental plans. Pizzitola Aff. at ¶ 10.

CLASS ACTION ALLEGATIONS

262. This action is brought by the Petitioners individually and on behalf of a class (the "Class") pursuant to CPLR § 901. The Class is defined as all Medicare-eligible retired City workers and their Medicare-eligible dependents.

263. The Class consists of over 250,000 Medicare-eligible retired New York City workers and their Medicare-eligible dependents, and is thus so numerous that joinder of all members is impracticable. The identities and addresses of Class members can be readily ascertained from business records maintained by the Respondents.

264. The claims asserted by the Petitioners are typical of the claims of the Class.

265. The Petitioners will fairly and adequately protect the interests of the Class and do not have any interests antagonistic to those of the Class members.

266. The Petitioners have retained experienced attorneys who are competent to serve as Class counsel.

267. This action is appropriate as a class action pursuant to CPLR § 901 because common questions of law and fact affecting the Class predominate over those questions affecting only individual members. Those common questions include:

whether the Respondents made a clear and unambiguous promise to the Retirees that the City would provide and pay for Medicare plus supplemental insurance when they retired and became Medicare-eligible;

whether Retirees reasonably and detrimentally relied on this promise;

whether the Respondents violated the New York City Administrative Procedure Act;

whether the Respondents violated the Retiree Health Insurance Moratorium Act;

whether the Respondents violated Section 12-126 and/or its authorizing statute;

whether the Respondents violated the New York City Human Rights Law;

whether the Respondents violated the New York State Human Rights Law;

whether the Respondents violated article V, section 7 of the New York Constitution;

whether the Respondents' actions are anticompetitive in violation of General Business Law § 340;

whether the Respondents' actions discriminate against the disabled;

whether the Respondents' conduct is arbitrary, capricious, or an abuse of discretion;

whether the Respondents have been unjustly enriched by their actions;

whether it is against equity and good conscience to allow the Respondents to retain the fruits of their unjust enrichment;

whether the Respondents willfully or knowingly made false or misleading representations about the Aetna MAP; and

whether Retirees reasonably relied on the Respondents' false or misleading misrepresentations about the Aetna MAP.

FIRST CAUSE OF ACTION

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

268. Petitioners incorporate by reference all allegations in this Petition/Complaint and restate them as if fully set forth herein.

269. Respondents made a clear and unambiguous promise to all Retirees—before, during, and after their employment—that, when they retired and became Medicare-eligible, the City would provide and pay for their healthcare through a combination of Medicare plus a choice of Medicare Supplemental plans. *See, e.g.*, Bentkowski Aff.; Engel Aff.; Feinman Aff.; Lossino Aff.; J. Mihovics Aff.; Miller Aff.; Rhine Aff.; Rieser Aff.; Zimmerman Aff.; Pizzitola Aff. ¶¶ 14-17, 19; Pizzitola Aff., Ex. 1; Barrios-Paoli Aff. at ¶¶ 19-29.

270. Respondents made this promise in numerous healthcare- and pension-related documents, including SPDs, as well as in countless verbal communications.

271. For 57 years, Respondents have honored this promise and offered retired City workers the option of Medicare plus several City-funded Medicare Supplemental plans.

272. Retirees reasonably and foreseeably relied upon this promise and did so to their detriment. *See, e.g.*, Bentkowski Aff.; Engel Aff.; Feinman Aff.; Lossino Aff.; J. Mihovics Aff.; Miller Aff.; Rhine Aff.; Rieser Aff.; Zimmerman Aff.; Pizzitola Aff. ¶¶ 17, 19; Pizzitola Aff., Ex. 1; Barrios-Paoli Aff. at ¶¶ 30, 39.

273. Countless Retirees took public service jobs in reliance on the promise that, in exchange for a lower salary than they would have received in the private sector, the City would cover the cost of Medicare Supplemental insurance in their retirement. *See, e.g.*, Bentkowski Aff.; Engel Aff.; Feinman Aff.; Lossino Aff.; J. Mihovics Aff.; Miller Aff.; Rhine Aff.; Rieser Aff.; Zimmerman Aff.; Pizzitola Aff. ¶¶ 17, 19; Pizzitola Aff., Ex. 1; Barrios-Paoli Aff. at ¶¶ 30, 39.

Had Retirees known that the City would renege on this promise, many would have taken jobs in the private sector instead. *Id.*

274. So too did many Retirees choose to take dangerous careers in public service based on the first-class healthcare benefits they were promised in retirement. Countless first responders sacrificed their health and safety—including by rushing into burning buildings, inhaling toxic fumes at Ground Zero, and performing CPR on people with highly infectious diseases—in reliance on the Respondents' promise that, when they became old and/or disabled, the City would provide them with Medicare plus Medicare Supplemental insurance. Many of them are now sick with cancer and other life-threatening diseases caused by their heroic service. *See, e.g.*, Bentkowski Aff. at ¶¶ 2-7; Pizzitola Aff. at ¶¶ 2, 17, 19; Pizzitola Aff., Ex. 1. Had Retirees known that the City would renege on its promise, many would not have taken—or remained in— these jobs. *Id.*

275. Moreover, because Retirees were led to believe that the City would provide them with Medicare plus Medicare Supplemental insurance, they had no reason to save or budget for this expense, which costs thousands of dollars a year. Pizzitola Aff. at ¶¶ 17, 19; Pizzitola Aff., Ex. 1; Barrios-Paoli Aff. at ¶ 31; Bentkowski Aff.; Engel Aff.; Feinman Aff.; Lossino Aff.; J. Mihovics Aff.; Miller Aff.; Rhine Aff.; Rieser Aff.; Zimmerman Aff.. Had Retirees known that they would need to pay thousands of dollars a year for their healthcare, they would have drastically altered their savings, spending, and investment strategies long ago, and might have delayed retirement or taken a second job in order to afford this increased healthcare expense. *Id.*

276. Retirees also relied to their detriment on the City's healthcare promise because they chose their medical providers—including doctors, hospitals, and continuing care facilities—without regard to whether these providers might accept the Aetna MAP or any Medicare Advantage pan – and many do not. Pizzitola Aff. at ¶¶ 17, 19; Pizzitola Aff., Ex. 1; Miller Aff. at

¶¶ 4, 6-7; Burns Aff. at ¶ 7-10; Barrios-Paoli Aff. at ¶¶ 13, 37, 39. Had they known they would be forced into Medicare Advantage, many of these Retirees—particularly those in the middle of treatment for serious illnesses such as cancer—would have chosen medical providers that accept such insurance.

277. Retirees also made decisions about where to retire without regard to whether the state they moved to would guarantee their right to enroll in a Medicare Supplemental plan. Pizzitola Aff., Ex.1; Barrios-Paoli Aff. at ¶ 40. Had they known the City would not provide them Medicare Supplemental insurance, many would have retired elsewhere.

278. These are just some of the ways in which Retirees have reasonably and detrimentally relied on the City's promise of Medicare plus supplemental insurance. There are countless others.

279. As a result of Retirees' reliance on these promises, they have suffered and will suffer significant monetary and non-monetary injuries. Among other injuries, Respondents' false promises will cause Retirees to collectively incur millions of dollars in unexpected medical expenses, including but not limited to the cost of Medicare-plus-supplemental insurance (for those who opt out of the Aetna MAP) and various increased out-of-pocket expenses incurred under the Aetna MAP (for those who are automatically enrolled in that plan). Respondents' false promises will also cause Retirees to lose access to medical providers and healthcare facilities and to suffer denials of and delays in medical care. For many Retirees living in continuing care facilities, the Respondents' false promises will cause them to lose their home. Respondents' false promises have also prevented Retirees from making informed financial and healthcare decisions; and have caused, and will cause, Retirees to suffer severe emotional and psychological distress. These injuries will continue until the City's misconduct is enjoined.

280. In addition, and unless the City's misconduct is enjoined, Retirees who opt out of the Aetna MAP and try to obtain Medigap coverage on the open market may be denied Medigap coverage due to pre-existing conditions—but there is no way for them all to know in advance if this will happen.

281. Even for those Retirees who opt out of the Aetna MAP and are able to get Medigap coverage on the open market, they will have to pay extremely high monthly premiums for that coverage, and the City will no longer reimburse them for their Medicare Part B premiums.

282. Absent immediate injunctive relief, the Respondents' misleading and false promises will result in manifest injustice. Elderly and disabled fixed-income Retirees who—in reliance on the City's promises—faithfully served, and even risked their lives for, this City will now face crippling healthcare costs, denials of and delays in life-saving treatments and medications, loss of access to medical providers, and removal from their continuing care facilities, among other harms.

SECOND CAUSE OF ACTION

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

283. Petitioners incorporate by reference all allegations in this Petition/Complaint and restate them as if fully set forth herein.

284. Several Petitioners, and a large percentage of Retirees, are retired public-school teachers. They have an added level of health insurance protection under the Retiree Health Insurance Moratorium Act, Chapter 729 of the Laws of 1994 (as amended by L 2009, Ch. 30 and L 2009, ch. 501 § 14) (the "Moratorium Law").

285. The Moratorium Law prohibits a school board or district "from diminishing the health insurance benefits provided to retirees and their dependents or the contributions such board

or district makes for such health insurance coverage" unless the board or district makes "a corresponding diminution of benefits or contributions" for active employees.

286. The Moratorium Law was passed in 1994 and renewed every year until it was made permanent in 2010.

287. Recognizing that retirees are in a "very precarious position" because they are no longer protected by the collective bargaining process, the Legislature passed the Moratorium Law as "a very reasonable protection that retirees need to assure reasonable health insurance and health care." Gardener Aff., Ex. P at McKinney's 1997 Session Laws of New York.

288. The legislative history repeatedly states that "[t]he law provides that school districts may reduce neither the level of health insurance coverage nor their contribution toward its cost for retirees, unless the reduction applies equally to active employees. . . . The law does not, however, prevent school districts from taking cost-cutting measures, so long as these apply equally to active employees and retirees." Gardener Aff., Ex. P at McKinney's 2004 Session Laws of New York.[44] Thus, in order for "school districts [to] tak[e] cost-cutting measures," they must "apply equally to active employees and retirees." *Id*.

289. Respondents previously paid $191.57 per Retiree per month for Senior Care coverage; they will now pay $15 per Retiree per month for the Aetna MAP and approximately $7.50 per Retiree per month for HIP VIP.

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[44] *See also id.* at McKinney's 2002 Session Law News of New York; *id.* at McKinney's 2009 Session Law News of New York; *id.* at McKinney's 2000 Session Law News of New York; *id.* at McKinney's 2008 Session Law News of New York; *id.* at McKinney's 2007 Session Law News of New York; *id.* at McKinney's 2005 Session Law News New York; *id.* at McKinney's 2001 Session Law News of New York; *id.* at McKinney's 2003 Session Law News of New York; *id.* at McKinney's 1999 Session Law News of New York; *id.* at McKinney's 2006 Session Law News of New York.

290. Respondents have not made any corresponding diminution in their contributions to the health insurance of active employees. Quite the opposite: as reflected in the City's annual COBRA Premium documents and GASB 74/75 Reports, the City's funding for active employee health insurance has increased consistently over the years. *See* Pizzitola Aff. at ¶ 34; Gardener Aff., Ex. G.[45]

291. The Respondents have also diminished the health insurance benefits of Retirees. They have not made a corresponding diminution in the benefits offered to active employees.

292. The diminishment in health insurance benefits for Retirees is vast, and includes, among other things, the imposition of co-pays; the elimination of healthcare choice and access to care; the addition of prior authorization; and a significant increase in the costs of prescription drugs. There has not been a corresponding diminishment in the benefits of active employees.

293. **Co-pays.** The Aetna plan—in contrast to Senior Care, which has no co-pays for medical services[46]—has co-pays of $15 for a variety of medical services, including specialist visits.

294. There has not been a corresponding diminishment in the benefits of active employees.

295. The co-pays for active employees have remained the same. Active employees also continue to have the option of choosing a plan with no or lower co-pays.[47] These options include

[45] The GASB 74/75 Reports are available online. *See, e.g.,* The Official Website of the City of New York, *Pension Valuation Reports,* 2019-2022, https://perma.cc/ZC7E-TFKU.

[46] Any co-pays for medical services under Senior Care are contractually prohibited, and currently enjoined due to pending litigation. *See* Index No. 160234/2022, NYSCEF Doc. No. 60; Case No. 2023-00232, NYSCEF Doc. No. 18.

[47] *See, e.g.,* The Official Website of the City of New York, *NYC Health Benefits Program Summary of Benefits and Coverage (SBC)*, https://perma.cc/R9D8-LJ6E.

GHI-CBP Basic (which has $0 co-pays for all "preferred" providers, including specialists); Emblem HIP HMO Preferred ($0 co-pays for all "preferred" providers, including specialists, and $10 co-pays for "participating" specialists); and MetroGold ($0 co-pays for all in-network providers, including specialists).

296. **Elimination of Choice and Access to Care.** For decades, Retirees have had a choice of approximately a dozen health insurance plans, including Medigap plans. Retirees now have the single option of a Medicare Advantage plan.[48] This lack of choice is particularly harmful because many medical providers do not accept the Aetna MAP, or any Medicare Advantage plan.

297. There has not been a corresponding diminishment in the benefits of active employees.

298. The range and choice of plans offered to active employees have not changed, and they cover a much greater network of medical providers. This not only means that it will be more difficult for Retirees to find doctors, but also that many sick, elderly Retirees will lose access to their current doctors. Active employees have faced no comparable diminution: they previously had, and still have, a choice of around a dozen plans.[49]

299. **Prior Authorization.** Whereas Medicare and Medicare Supplemental plans like Senior Care have no prior authorization, the Aetna MAP—like all Medicare Advantage plans—does.

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[48] Although some Retirees have the "choice" of HIP VIP, that plan is only available in New York City and a few surrounding counties (Nassau, Suffolk, Rockland, Orange, and Westchester). *See* https://perma.cc/7A4D-29QX. Retirees living in other New York counties or other states have no choice at all. Moreover, even for those Retirees who can access HIP VIP, their "choice" is an artificial one because HIP VIP is a highly restrictive Medicare Advantage plan, with a limited network of medical providers that enrollees must stay within.

[49] *See, e.g.,* The Official Website of the City of New York, *NYC Health Benefits Program Summary of Benefits and Coverage (SBC)*, https://perma.cc/3LB9-A7SD.

300. There has not been a corresponding diminishment in the benefits of active employees.

301. To be sure, health insurance plans for active employees have long required prior authorization for certain services. However, because active employees are generally healthier and more resilient than Medicare-eligible retirees (who are all elderly or disabled), denials of and delays in their care are less likely to be fatal.

302. **Prescription Drugs**. Retirees also face a significant increase in the cost of prescription drugs under the Aetna MAP. There has not been a corresponding diminishment in the benefits of active employees. In fact, the cost of prescription drug plans and of the drugs themselves are lower for active employees than for Retirees.

303. Respondents' actions therefore violate the Moratorium Law and, by extension, CPLR 7803.

304. The Respondents' misconduct has caused and, if not enjoined, will cause Petitioners and the Class significant monetary and non-monetary injuries. Among other injuries, Retirees will lose access to their medical providers; be subject to denials of and delays in necessary medical care; collectively incur millions of dollars in co-pays and other healthcare expenses; be forced to forego medical care and other basic necessities; and they have suffered, and will suffer, severe emotional and psychological distress. These injuries will continue until the City's misconduct is enjoined.

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. Petitioners incorporate by reference all allegations in this Petition/Complaint and restate them as if fully set forth herein.

306. The City's decision to eliminate Medigap coverage is arbitrary and capricious and an abuse of discretion because many Retirees will face a dangerous disruption in life-saving medical care.

307. Many Retirees are receiving treatment for life-threatening illnesses by medical providers who will not accept the Aetna MAP. If these Retirees are forced into the Aetna MAP, they will lose access to the medical providers on whom their lives depend.

308. In order to keep their medical providers, on whom they desperately depend for life-saving treatment, these Retirees will have to opt out of the Aetna MAP and obtain Medigap coverage on their own on the open market. However, many of these Retirees will be unable to enroll in a Medigap plan due to their preexisting conditions and/or the fact that they are under 65.

309. For those Retirees who are lucky enough to pass underwriting and access a Medigap plan on the open market, many will not be able to afford the high cost of such plans and the Medicare Part B premium.

310. This puts Retirees undergoing treatment for serious illnesses in an impossible position: if the doctor treating them does not accept the Aetna MAP, they will have to opt out to ensure continuity of care; but they may not be able to find a Medigap plan that will insure them (at least not for an affordable amount), thus leaving them uninsured at the very moment when they need health insurance the most.

311. The City's misconduct has caused and, if not enjoined, will cause Petitioners and the Class significant monetary and non-monetary injuries. Among other injuries, Retirees will lose access to medical providers and/or face prohibitively expensive healthcare costs. Retirees have also suffered, and will continue to suffer, severe emotional and psychological distress. These injuries will continue until the City's misconduct is enjoined.

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. Petitioners incorporate by reference all allegations in this Petition/Complaint and restate them as if fully set forth herein.

313. The City is forcing Retirees into making a highly consequential and irreversible healthcare enrollment decision by June 30, 2023 without adequate and accurate information. That is arbitrary, capricious, and an abuse of discretion.

314. Many Retirees have never received the promised "comprehensive packages from Aetna with detailed information about the plan and resources available." Pizzitola Aff. at ¶ 36.

315. Because many Retirees rely exclusively on hard-copy documents when making healthcare decisions, they will be unable to make an informed enrollment decision without these comprehensive packages. Pizzitola Aff. at ¶ 36.

316. Even those Retirees who received the informational materials regarding the Aetna MAP will be unable to make an informed enrollment decision because these materials misrepresent critical features of the Aetna MAP.

317. The materials also fail to disclose the many ways in which the Aetna MAP is inferior to Retirees' existing Medicare-plus-supplemental insurance.

318. The City has also made the process of declining Medicare Advantage coverage impossibly confusing and unduly burdensome, particularly for senior citizens.

319. The City's misconduct has caused, and if not enjoined, will cause Petitioners and the Class significant monetary and non-monetary injuries. Among other injuries, it has caused Retirees to suffer severe emotional and psychological distress and prevented Retirees from making informed financial and healthcare decisions. Further, if not enjoined, Retirees will lose access to

their medical providers; be subject to denials of and delays in necessary medical care; collectively incur millions of dollars in co-pays and other healthcare expenses they cannot afford; and be forced to forego medical care and other basic necessities. These injuries will continue until the City's misconduct is enjoined.

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. Petitioners incorporate by reference all allegations in this Petition/Complaint and restate them as if fully set forth herein.

321. Section 12-126 requires the City to offer and pay for a choice of Medicare Supplemental insurance plans. By eliminating all Medicare Supplemental insurance options from the City's Health Benefits Program, Respondents are violating Section 12-126 and, by extension, CPLR 7803.

322. The Respondents' misconduct has caused and, if not enjoined, will cause Petitioners and the Class significant monetary and non-monetary injuries. Among other injuries, Retirees will lose access to their medical providers; be subject to denials of and delays in necessary medical care; collectively incur millions of dollars in co-pays and other healthcare expenses they cannot afford; be forced to forego medical care and other basic necessities; and they have suffered, and will suffer, severe emotional and psychological distress. These injuries will continue until the City's misconduct is enjoined.

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. Petitioners incorporate by reference all allegations in this Petition/Complaint and restate them as if fully set forth herein.

324. The Respondents are discriminating against disabled Retirees under the age of 65 on the basis of their disabilities in violation of the New York City Human Rights Law ("NYCHRL"), N.Y.C. Admin. Code § 8-101 *et seq*.

325. The elimination of Medicare plus supplemental insurance and the forced enrollment of Medicare-eligible individuals in Medicare Advantage has a discriminatory and disparate impact on disabled Retirees, who will (1) receive inferior health insurance coverage as compared to their non-disabled (*i.e.*, non-Medicare-eligible) counterparts, and (2) suffer the negative effects of having their longstanding health insurance eliminated.

326. If they are not disabled, retired City workers and their dependents who are under 65 are not eligible for Medicare and therefore have the same health insurance benefits as active employees. Medicare-eligible Retirees and dependents who are under the age of 65 are Medicare-eligible as a result of their disability.

327. Disabled under-65 Retirees and dependents will be forced into the Aetna MAP under the City's new healthcare policy. Thus, all of the harmful effects of the City's new healthcare policy will be experienced by disabled under-65 Retirees and dependents, but not by non-disabled under-65 Retirees and dependents.

328. Non-disabled Retirees and dependents under the age of 65, on the other hand, will have the same choice of health insurance options they and active employees have long had, and therefore will not suffer the adverse consequences of the Respondents' unlawful actions.

329. Exacerbating the situation, for retired police officers and firefighters who are receiving disability benefits for line-of-duty injuries, treatment is covered by their health insurance, not workers' compensation. Pizzitola Aff. at ¶ 35.

330. Disabled Retirees are all undergoing treatment for serious illness or injury, which treatment may be disrupted by the Respondents' new healthcare policy, particularly if their medical providers will not accept the Aetna MAP.

331. Moreover, disabled Retirees who need to opt out of the Aetna MAP and purchase a Medigap plan on the open market may be denied coverage on the basis of their pre-existing conditions. Non-disabled retirees, however, will continue to be covered under their existing City-funded health insurance, and will continue to have a choice of multiple City-funded health insurance plans.

332. As a result of Respondents' unlawful actions, disabled under-65 Petitioners and disabled under-65 members of the Class have suffered, and will suffer, significant monetary and non-monetary injuries. Among other injuries, these Retirees will lose access to their medical providers; be subject to denials of and delays in necessary medical care; collectively incur millions of dollars in co-pays and other healthcare expenses they cannot afford; be forced to forego medical care and other basic necessities; and they have suffered, and will suffer, severe emotional and psychological distress. These injuries will continue until the City's misconduct is enjoined.

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. Petitioners incorporate by reference all allegations in this Petition/Complaint and restate them as if fully set forth herein.

334. The Respondents are discriminating against disabled Retirees under the age of 65 on the basis of their disabilities in violation of the New York State Human Rights Law ("NYSHRL"), N.Y. Exec. Law § 290 *et seq*.

335. The elimination of Medicare plus supplemental insurance and forced enrollment of Medicare-eligible individuals in Medicare Advantage has a discriminatory and disparate impact on disabled Retirees, who will (1) receive inferior health insurance coverage as compared to their non-disabled (*i.e.*, non-Medicare-eligible) counterparts, and (2) suffer the negative effects of having their longstanding health insurance eliminated.

336. If they are not disabled, retired City workers and their dependents who are under 65 are not eligible for Medicare and therefore have the same health insurance benefits as active employees. Medicare-eligible Retirees and dependents who are under the age of 65 are Medicare-eligible as a result of their disability.

337. Disabled under-65 Retirees and dependents will be forced into the Aetna MAP under the City's new healthcare policy. Thus, all of the harmful effects of the City's new healthcare policy will be experienced by disabled under-65 Retirees and dependents, but not by non-disabled under-65 Retirees and dependents.

338. Non-disabled Retirees and dependents under the age of 65, on the other hand, will have the same choice of health insurance options they and active employees have long had, and therefore will not suffer the adverse consequences of the Respondents' unlawful actions.

339. Exacerbating the situation, for retired police officers and firefighters who are receiving disability benefits for line-of-duty injuries, treatment is covered by their health insurance, not workers' compensation. Pizzitola Aff. at ¶ 35.

340. Disabled Retirees are all undergoing treatment for serious illness or injury, which treatment may be disrupted by the Respondents' new healthcare policy, particularly if their medical providers will not accept the Aetna MAP.

341. Moreover, disabled Retirees who need to opt out of the Aetna MAP and purchase a Medigap plan on the open market may be denied coverage on the basis of their pre-existing conditions. Non-disabled retirees, however, will continue to be covered under their existing City-funded health insurance, and will continue to have a choice of multiple City-funded health insurance plans.

342. As a result of Respondents' unlawful actions, disabled under-65 Petitioners and disabled under-65 members of the Class have suffered, and will suffer, significant monetary and non-monetary injuries. Among other injuries, these Retirees will lose access to their medical providers; be subject to denials of and delays in necessary medical care; collectively incur millions of dollars in co-pays and other healthcare expenses they cannot afford; be forced to forego medical care and other basic necessities; and they have suffered, and will suffer, severe emotional and psychological distress. These injuries will continue until the City's misconduct is enjoined.

EIGHTH CAUSE OF ACTION

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

343. Petitioners incorporate by reference all allegations in this Petition/Complaint and restate them as if fully set forth herein.

344. Respondents have been and will be unjustly enriched by their decision to eliminate the option of Medicare supplemental insurance and replace it with only Medicare Advantage.

345. Petitioners worked for the City for decades and their promised health insurance benefits – namely, the option of City-funded Medicare plus supplemental insurance – is a form of deferred compensation that the City continues to owe them.

346. By forcing Retirees into a materially inferior – and cheaper – form of health insurance, Respondents will be unjustly enriching themselves by hundreds of millions of dollars a year.

347. In order to continue receiving the same quality of care, Retirees will have to pay the Medicare Part B premium and IRMAA and obtain their own Medigap plan on the open market. But that will cost them many thousands of dollars a year. Respondents will therefore be unjustly enriched because they will have shifted the entire cost of health insurance coverage onto Retirees.

348. Retirees who try to obtain a Medigap plan on the open market but are denied coverage due to pre-existing conditions will simply be out of luck – and out of health insurance coverage. They will have to pay for their medical care out of pocket, or forego that care. Either way, Respondents will escape their financial obligations and be unjustly enriched as a result.

349. Retirees who are removed from their Medicare-plus-supplemental insurance and enrolled in the Aetna MAP or HIP VIP will receive inferior healthcare that will be almost entirely paid for by the federal government. Like other Medicare Advantage plans, the Aetna MAP and

HIP VIP have limited networks of doctors, dangerous prior authorization requirements, and various hidden and increased costs. By forcing Retirees into Medicare Advantage, Respondents will be violating their obligations to Retirees while simultaneously reducing their own costs by hundreds of millions of dollars a year.

350. It would be against equity and good conscience to allow Respondents to retain the hundreds of millions of dollars a year they will reap as a result of their unjust and unlawful scheme to force Retirees into Medicare Advantage.

351. First, Respondents engaged in an unjust bait and switch. For 57 years, the City has promised municipal workers that a career in civil service – which pays wages substantially below those in the private sector – would entitle them to City-funded Medicare plus supplemental insurance in retirement. Retirees worked for the City for decades in reliance on this promise. When he was running for office, now-Mayor Adams agreed that eliminating Medicare plus supplemental insurance would be an unfair "bait and switch" that would "traumatize" these elderly and disabled Retirees.[50] He added: "You don't become a civil servant to become a billionaire. You become a civil servant to have stable health care, a stable pension and a stable life, and we cannot destabilize it after they retire. Right now, after serving your city, we should not do any type of bait and switch. When you retire, you retire with an understanding, and we need to make sure we live up to that agreement."[51]

[50] *See* Michael Gartland, *Eric Adams calls Mayor de Blasio's NYC retiree health care shift a 'bait and switch'*, NEW YORK DAILY NEWS, Oct. 15, 2021, https://www.nydailynews.com/news/politics/nyc-elections-2021/ny-nyc-mayoral-race-eric-adams-slams-de-blasio-retiree-health-benefits-shift-20211015-b7h24irvh5edbfg4qhxhj2pczq-story.html.

[51] *Id.*

352. Second, Respondents are statutorily and contractually required to continue offering, and paying for, a choice of Medicare Supplemental plans.

353. Third, the vast majority of Retirees survive on meager pensions. Absent the City fulfilling its obligation to pay for Medicare plus supplemental insurance, most Retirees will be unable to afford the healthcare that they need and to which they are entitled.

354. By forcing Retirees to incur expenses that Respondents themselves owe, Respondents have been, and will continue to be, unjustly enriched. Equity and good conscience demand that Respondents' unjust enrichment be enjoined and that any financial benefit they receive (including in the form of savings) be disgorged.

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. Petitioners incorporate by reference all allegations in this Petition/Complaint and restate them as if fully set forth herein.

356. The New York City Administrative Procedure Act ("CAPA"), N.Y. City Charter ch. 45 §§ 1041–47, provides a vital check on government power by protecting the right of ordinary citizens to review and weigh in on agency "rules" before they become bound by them. CAPA, § 1043. Every "rule" must undergo, among other things: (i) publication in the City Record with the "purpose of the proposed rule" and "the statutory authority" supporting it; (ii) a 30-day public notice-and-comment period; (iii) public hearings; and (iv) review by the Corporation Counsel and City Council. *Id.*

357. "Agency" is defined to include "one or more of the elected or appointed officers provided for in this charter and any other official or entity which is acting (1) under the direction of one or more of such officers, (2) under the direction of one or more other officials who are

appointed by, or appointed on the recommendation of, such officers, or (3) under the direction of a board, the majority of whose members are appointed by, or appointed upon the recommendation of, one or more of such officers, but shall not include the city council." *Id.* at § 1041(2).

358. Mayor Eric Adams is an elected officer provided for in the City Charter, N.Y.C. City Charter ch. 1 §§ 3-20, and thus an "agency" as defined in Chapter 45.

359. Commissioner Campion and Chancellor Banks are appointed officers acting under the direction of Mayor Adams, and thus each an "agency" as defined in Chapter 45.

360. OLR is an entity acting under the direction of Commissioner Campion and is therefore an "agency" as defined in Chapter 45.

361. The DOE is an entity acting under the direction of Chancellor Banks and is therefore an "agency" as defined in Chapter 45.

362. CAPA broadly defines "rule" as "the whole part of any statement or communication of general applicability that (i) implements law or policy, or (ii) prescribes the procedural requirements of an agency including an amendment, suspension, or repeal of any such statement or communication." *Id.* at § 1041(5). "'Rule' shall include, but not be limited to, any statement or communication which prescribes (i) standards which, if violated, may result in a sanction or penalty; (ii) a fee to be charged by or required to be paid to an agency; (iii) standards for the issuance, suspension or revocation of a license or permit; (iv) standards for any product, material, or service which must be met before manufacture, distribution, sale or use; (v) standards for the procurement of goods and services; (vi) standards for the disposition of public property or property under agency control; or (vii) standards for the granting of loans or other benefits." *Id.* at § 1041(5)(a).

363. Since the 1960s, the City's Health Benefits Program has provided Medicare-eligible Retirees with free healthcare through a combination of Medicare plus a choice of multiple Medicare Supplemental plans.

364. In March 2023, OLR issued an unprecedented directive ordering all Medicare-eligible retired City workers and their dependents to be stripped of their longstanding health insurance and automatically enrolled in the Aetna MAP starting September 1, 2023.

365. Medicare Advantage is fundamentally different from, and inferior to, the Medicare-plus-supplemental insurance that the City has always provided to Retirees.

366. If Medicare-eligible Retirees wish to receive fully paid-for health insurance coverage (as is their right under § 12-126), they must be enrolled in either the Aetna MAP or HIP VIP (another Medicare Advantage plan). If they choose to opt out, they must do so between May 1 and June 30, 2023.

367. Retirees who opt out will (at best) have to pay for Medicare Supplemental insurance on the open market plus the cost of Medicare Part B premiums, and (at worst) lose coverage entirely.

368. The new retiree healthcare policy adopted by Respondents and formally announced by OLR meets the definition of a "rule" for several reasons. It is a "statement" of "general applicability" because it is a rigid policy that will be applied across-the-board to all Medicare-eligible Retirees and dependents without regard to individualized circumstances or mitigating factors, and it both (1) "implements" a new healthcare "policy," and (2) attempts to "apply" § 12-126, the "law" governing Retiree healthcare benefits. In addition, by conditioning the provision of health insurance benefits on a Retiree's enrollment in Medicare Advantage and compliance with the terms of such insurance, the City set new "standards for the granting of … benefits."

369. Common sense confirms that Respondents are implementing new healthcare "rules" for Retirees. Under the new retiree healthcare policy, for the first time in history: (1) Retirees will no longer be able to enroll in Medicare plus their choice of Medicare supplemental insurance; (2) instead, if they want free health insurance (as is their statutory right), they must enroll in a Medicare Advantage plan chosen by the City; (3) if Retirees wish to continue seeing medical providers who do not accept Medicare Advantage generally or the Aetna MAP specifically, they will have to pay for their own healthcare; (4) Retirees will be prohibited from obtaining services and medications subject to prior authorization unless Aetna first deems them medically necessary; (5) if Retirees wish to see out-of-network doctors, they will be responsible for ensuring that Aetna deems the services ordered by their doctors to be medically necessary and will be financially responsible for the cost of any services provided that are not deemed medically necessary; and (6) in-network medical providers treating Retirees will have to refrain from administering services subject to prior authorization unless and until Aetna deems them medically necessary. This is rulemaking, regardless of what the City might call it.

370. Respondents' new rules were not adopted in compliance with CAPA. Indeed, none of the procedures required by CAPA were followed.

371. Accordingly, Respondents' decision to force Retirees off of their longstanding Medicare-plus-supplemental insurance and into Medicare Advantage is unlawful and cannot be implemented.

372. Respondents refused to comply with CAPA because they wanted to avoid the scrutiny, accountability, and public outcry such compliance would have entailed. They preferred to control public opinion by falsely advertising the Aetna MAP as an "improve[ment] upon retirees'

current plans" and "in the best interests of . . . our city's retirees."[52] Had the truth of Respondents' cruel healthcare policy been exposed to the harsh glare of CAPA's months-long notice and comment process, the backlash would have been overwhelming and could have forced City leaders to abandon—or at least substantially modify—the policy. A quarter-million retirees were unlawfully deprived of this opportunity to have their voices heard before the rules governing their healthcare were upended.

373. Respondents' unlawful overhaul of Retirees' healthcare has therefore harmed Petitioners and the Class by depriving them of CAPA's procedural protections, denying them an opportunity to have their voices heard, and materially reducing their healthcare benefits.

TENTH CAUSE OF ACTION

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

374. Petitioners incorporate by reference all allegations in this Petition/Complaint and restate them as if fully set forth herein.

375. Respondents have a special relationship with Retirees. Respondents are legally and ethically obligated to provide healthcare to Retirees.

376. Respondents also have a duty to fully and accurately describe the Aetna plan, and the process for opting out, in materials distributed to Retirees.

377. Respondents have violated this duty. They have made a series of misleading and inaccurate statements about the Aetna MAP, including by repeatedly reassuring Retirees that their medical providers would accept the plan.

[52] *See, e.g.*, Office of the Mayor Press Release, March 30, 2023, https://perma.cc/SGZ7-JSVQ.

378. Respondents have also made misleading and inaccurate statements about the process for opting out of the Aetna MAP.

379. Retirees have reasonably relied on these misrepresentations when deciding whether to opt out of the Aetna plan.

380. Respondents not only knew that Retirees would rely on these misrepresentations, but intended Retirees to do so.

381. By relying on Respondents' misrepresentations, Petitioners and the Class have suffered, and will suffer, significant monetary and non-monetary injuries. Among other injuries, Respondents' misrepresentations have prevented Retirees from making informed financial and healthcare decisions; have caused, and will cause, Retirees to incur additional healthcare expenses they cannot afford; and have caused, and will cause, Retirees to suffer severe emotional and psychological distress. These injuries will continue until Respondents cease and affirmatively correct their misrepresentations, and the relevant deadlines imposed by Respondents (June 30, 2023 to opt out of the Aetna MAP and September 1, 2023 to be forced off of their existing health insurance) are enjoined.

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. Petitioners incorporate by reference all allegations in this Petition/Complaint and restate them as if fully set forth herein.

383. General Business Law § 340 (the "Donnelly Act") provides that "[e]very contract, agreement, arrangement or combination whereby [a] monopoly in the conduct of any business, trade or commerce or in the furnishing of any service in this state, is or may be established or maintained, or whereby [c]ompetition or the free exercise of any activity in the conduct of any

business, trade or commerce or in the furnishing of any service in this state is or may be restrained or whereby [f]or the purpose of establishing or maintaining any such monopoly or unlawfully interfering with the free exercise of any activity in the conduct of any business, trade or commerce or in the furnishing of any service in this state any business, trade or commerce or the furnishing of any service is or may be restrained, is hereby declared to be against public policy, illegal and void."

384. Respondents conspired with Aetna to unlawfully restrain competition with respect to Retiree health insurance. Respondents not only conspired with Aetna, they also have a reciprocal arrangement with Aetna.

385. The City's contract with Aetna establishes and maintains a monopoly and restrains competition in the furnishing of health insurance in New York and in all states in which Retirees reside. This anti-competitive arrangement greatly enriches both the City and Aetna to the detriment of Retirees and the market for Retiree healthcare.

386. Aetna previously made this very Donnelly Act argument in its bid to halt the City's previous Medicare Advantage plan, which was to be administered by an "Alliance" of EmblemHealth and Anthem pursuant to a contract with the City. *See Aetna Life Insurance Company v. Renee Campion et al.* (Sup. Ct. N.Y. Cty.), Index No. 158216/2021, NYSCEF Doc. No. 6 at Ex. 5, p. 5.

387. The Aetna contract is just as, if not more, anticompetitive than the Alliance contract was. Whereas the Alliance contract was executed *with* public announcement and bidding, the Aetna contract was executed without public announcement or bidding: after the Alliance withdrew from the venture, the City negotiated with Aetna without rebidding the proposal. And whereas with the Alliance contract, Retirees still maintained a choice of Senior Care plus their existing

health insurance (they just had to pay the monthly premium), with the Aetna contract, Retirees have no choice at all.

388. The Aetna contract – and the corresponding elimination of multiple health insurance options – restrains trade by excluding numerous health insurance companies from participating in the health insurance market for Retirees.

389. The City's contract with Aetna is not a proper exercise of the police power. It conflicts with § 12-126 and the Moratorium Law. In addition, it is not reasonable, necessary, or appropriate for the protection of the public health and comfort—to the contrary, it jeopardizes public health by stripping vulnerable individuals of their health insurance coverage. It also violates fundamental rights of Retirees.

390. As a result of the Respondents' anticompetitive arrangement with Aetna, the Retirees have suffered, and will suffer, significant monetary and non-monetary injuries. Among other injuries, Respondents' arrangement with Aetna has caused, and will cause, Retirees to lose their ability to choose their health insurance from multiple options, as they have done for over half a century; lose access to medical providers; face the denial of lifesaving medical treatment; incur additional healthcare expenses they cannot afford; and suffer severe emotional and psychological distress. These injuries will continue until the City's misconduct is enjoined.

TWELTH 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. Petitioners incorporate by reference all allegations in this Petition/Complaint and restate them as if fully set forth herein.

392. The New York Constitution, article V, section 7 provides that, "[a]fter July first, nineteen hundred forty, membership in any pension or retirement system of the state or of a civil

division thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired."

393. Section 12-126 expressly conditions health insurance benefits on membership in a City pension or retirement system. It provides that "the city will pay the entire health insurance coverage for … city retirees," § 12-126(b)(a), and defines "[c]ity retiree" as "[a] person who: (1) is receiving a retirement allowance, pension or other retirement benefit from a retirement or pension system either maintained by the city or to which the city has made contributions on behalf of such person pursuant to subdivision (g) of section 80-a of the retirement and social security law." N.Y.C. Admin. Code § 12-126(a)(ii).

394. Because Section 12-126 conditions health insurance benefits on membership in a City pension or retirement system, health insurance benefits constitute "a contractual benefit, the benefits of which shall not be diminished or impaired."

395. Respondents have unlawfully diminished and impaired the health insurance benefits of Retirees.

396. Respondents' misconduct has caused and, if not enjoined, will cause Petitioners and the Class significant monetary and non-monetary injuries. Among other injuries, Retirees have suffered and will suffer a violation of their constitutional rights. In addition, they will lose access to their medical providers; be subject to denials of and delays in necessary medical care; collectively incur millions of dollars in co-pays and other healthcare expenses they cannot afford; be forced to forego medical care and other basic necessities; and they have suffered, and will suffer, severe emotional and psychological distress. These injuries will continue until the Respondents' misconduct is enjoined.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for judgment as follows:

397. Declaring this action to be a class action properly maintained pursuant to CPLR § 901, appointing Petitioners as representatives of the Class, and designating Petitioners' counsel as Class Counsel.

398. Granting preliminary and permanent injunctive relief to Petitioners and the Class enjoining: (1) the elimination of Retirees' existing health insurance coverage; (2) the automatic enrollment of Retirees in the Aetna MAP; (3) enforcement of the June 30, 2023 deadline to opt out of the Aetna MAP; and (4) implementation of any other aspect of the City's new retiree healthcare policy.

399. Awarding compensatory damages, restitution, disgorgement, and any other relief permitted by law or equity.

400. Awarding statutory damages in addition to actual damages.

401. Awarding treble damages.

402. Awarding punitive damages in an amount deemed appropriate by the Court.

403. Awarding Petitioners and the Class pre-judgment and post-judgment interest, as well as costs.

404. Awarding Petitioners reasonable attorneys' fees and costs pursuant to CPLR § 909 and any other applicable provision of law.

405. Awarding Petitioners and the Class such other relief as this Court may deem just and proper under the circumstances.

JURY DEMAND

Pursuant to Section 410 of the CPLR, Petitioners hereby demand a trial by jury as to all issues so triable.

Dated: New York, NY
May 31, 2023

Respectfully submitted,

WALDEN MACHT & HARAN LLP

By: _____

Jacob Gardener
Hannah O. Belitz
250 Vesey St., 27th Floor
New York, NY 10281
Tel: (212) 335-2965
jgardener@wmhlaw.com
hbelitz@wmhlaw.com

POLLOCK COHEN LLP

Steve Cohen
111 Broadway, Suite 1804
New York, NY 10006
(212) 337-5361
Scohen@PollockCohen.com

Attorneys for Petitioners-Plaintiffs

VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

Marianne Pizzitola, being duly sworn, states on behalf of the NYC Organization of Public Service Retirees, Inc. that she has read the foregoing Petition and Complaint and knows the contents thereof; and that the same is true to her own knowledge, except as to matters therein that are stated upon information and belief, and as to those matters, she believes them to be true.

MARIANNE PIZZITOLA

Sworn to before me this

26 day of May, 2023

KIMORA KAY HALL
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01HA6396569
Qualified in Bronx County
Commission Expires August 19, 2023

VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF PUTNAM)

Ellen Rieser, being duly sworn, states that she has read the foregoing Petition and Complaint and knows the contents thereof; and that the same is true to her own knowledge, except as to matters therein that are stated upon information and belief, and as to those matters, she believes them to be true.

Sworn to before me this

25th day of May, 2023

AUBREY ROSE COLELLA
Notary Public - State of New York
NO. 01CO6352793
Qualified in Dutchess County
My Commission Expires Jan 3, 2025

VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF NASSAU)

Nancy Losinno, being duly sworn, states that she has read the foregoing Petition and Complaint and knows the contents thereof; and that the same is true to her own knowledge, except as to matters therein that are stated upon information and belief, and as to those matters, she believes them to be true.

Nancy Losinno

Sworn to before me this
28th day of May, 2023

FRANCINE ZINERCO
Notary Public/State of NY
No. 01DE4794307
Qualified in Nassau County
Commission Exp. March 30, 2026

VERIFICATION

STATE OF FLORIDA)
) ss:
COUNTY OF ALACHUA)

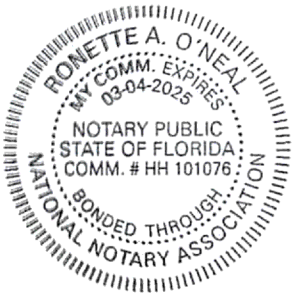
Karen Miller, being duly sworn, states that she has read the foregoing Petition and Complaint and knows the contents thereof; and that the same is true to her own knowledge, except as to matters therein that are stated upon information and belief, and as to those matters, she believes them to be true.

KAREN MILLER

STATE OF FLORIDA

COUNTY OF Alachua

Sworn to (or affirmed) and subscribed before me by means of ☑ physical presence or ☐ online notarization, this 26th day of May, 2023, by Karen Miller.



(Signature of Notary Public - State of Florida)

Ronette A. O'Neal
(Notary of Notary Typed, Printed or Stamped)

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✓ Produced Identification

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

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 THE NEW YORK CITY ORGANIZATION OF PUBLIC SERVICE RETIREES, INC.

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.

Index No. _____

CERTIFICATE OF CONFORMITY

I, **GREGORY J. WRIGHT**, an attorney duly licensed to practice law in the **STATE OF FLORIDA**, do hereby certify that the jurat, oath and affirmation, or proof upon the foregoing Affidavit of **KAREN MILLER**, notarized in the **STATE OF FLORIDA**, was taken in the manner prescribed by the laws of the **STATE OF FLORIDA** and duly conforms to the laws thereof for the taking of oaths and acknowledgments.

Dated: **MAY 30, 2023**

Gregory J. Wright
Gregory J. Wright (May 30, 2023 15:46 CDT)

GREGORY J. WRIGHT

VERIFICATION

STATE OF FLORIDA)
) ss:
COUNTY OF ORANGE)

Robert Bentkowski being duly sworn, states that he has read the foregoing Petition and Complaint and knows the contents thereof; and that the same is true to his own knowledge, except as to matters therein that are stated upon information and belief, and as to those matters, he believes them to be true.

ROBERT BENTKOWSKI

STATE OF FLORIDA

COUNTY OF Orange

Sworn to (or affirmed) and subscribed before me by means of ☑ physical presence or

☐ online notarization, this 25 day of May, 2023, by Robert Bentkausli.

(Signature of Notary Public - State of Florida)

JENNIFER OWENS
Notary Public - State of Florida
Commission # GG 354410
My Comm. Expires Jul 14, 2023
Bonded through National Notary Assn.

Jennifer Owens
(Notary of Notary Typed, Printed or Stamped)

My commission exp 7-14-2023

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

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 THE NEW YORK CITY ORGANIZATION OF PUBLIC SERVICE RETIREES, INC.

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.

Index No. _____

CERTIFICATE OF CONFORMITY

I, **GREGORY J. WRIGHT**, an attorney duly licensed to practice law in the **STATE OF FLORIDA**, do hereby certify that the jurat, oath and affirmation, or proof upon the foregoing Affidavit of **ROBERT BENTKOWSKI**, notarized in the **STATE OF FLORIDA**, was taken in the manner prescribed by the laws of the **STATE OF FLORIDA** and duly conforms to the laws thereof for the taking of oaths and acknowledgments.

Dated: **MAY 30, 2023**

Gregory J. Wright
Gregory J. Wright (May 30, 2023 19:46 CDT)

GREGORY J. WRIGHT

VERIFICATION

STATE OF FLORIDA)
) ss:
COUNTY OF NASSAU)

Karen Engel, being duly sworn, states that she has read the foregoing Petition and Complaint and knows the contents thereof; and that the same is true to her own knowledge, except as to matters therein that are stated upon information and belief, and as to those matters, she believes them to be true.

Karen Engel

KAREN ENGEL

STATE OF FLORIDA

COUNTY OF Nassau

Sworn to (or affirmed) and subscribed before me by means of ☑ physical presence or

☐ online notarization, this 25 day of May, 2023, by

Karen Engel.

JENNY L. TIMBERLAKE
Notary Public
State of Florida
Comm# HH154047
Expires 6/14/2025

Jenny L Timberlake
(Signature of Notary Public - State of Florida)

Jenny L. Timberlake
(Notary of Notary Typed, Printed or Stamped)

_____ Personally Known OR

✓ Produced Identification

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Title or Type of Document

(1) 5-25-23
Number of Pages (not including this page)

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

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 THE NEW YORK CITY ORGANIZATION OF PUBLIC SERVICE RETIREES, INC.

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.

Index No. _____

CERTIFICATE OF CONFORMITY

I, **GREGORY J. WRIGHT**, an attorney duly licensed to practice law in the **STATE OF FLORIDA**, do hereby certify that the jurat, oath and affirmation, or proof upon the foregoing Affidavit of **KAREN ENGEL**, notarized in the **STATE OF FLORIDA**, was taken in the manner prescribed by the laws of the **STATE OF FLORIDA** and duly conforms to the laws thereof for the taking of oaths and acknowledgments.

Dated: **MAY 30, 2023**

Gregory J. Wright
Gregory J. Wright (May 30, 2023 15:46 CDT)

GREGORY J. WRIGHT

VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF ROCKLAND)

John Mihovics, being duly sworn, states that he has read the foregoing Petition and Complaint and knows the contents thereof; and that the same is true to his own knowledge, except as to matters therein that are stated upon information and belief, and as to those matters he believes them to be true.

JOHN MIHOVICS

Sworn to before me this
26th day of May, 2023

TANIA LEVEILLE-ANDINO
Notary Public, State of New York
Qualified in Rockland County
Reg. No. 01LE6440201
My Commission Expires Sept. 6, 2026

VERIFICATION

STATE OF ARIZONA)
) ss:
COUNTY OF PIMA)

Michelle Feinman, being duly sworn, states that she has read the foregoing Petition and Complaint and knows the contents thereof; and that the same is true to her own knowledge, except as to matters therein that are stated upon information and belief, and as to those matters, she believes them to be true.

MICHELLE FEINMAN

JURAT

State of Arizona
County of Pima } ss.

Subscribed and sworn to (or affirmed) before me this
26 (Date) day of May (Month), 2023 (Year), by

Michelle Feinman
Name of Signer No. 1

Name of Signer No. 2 (if any)

Signature of Notary Public

LAWRENCE MCPHAIL
Notary Public - Arizona
Pima County
Commission # 588125
My Comm. Expires Jun 30, 2024

Place Notary Seal/Stamp Above

Any Other Required Information
(Residence, Expiration Date, etc.)

OPTIONAL

This section is required for notarizations performed in Arizona but is optional in other states. Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

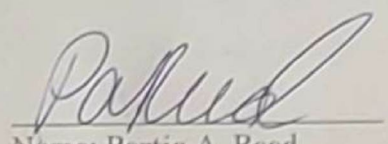
Description of Attached Document

Title or Type of Document: Jurat
Document Date: 5/26/2023 Number of Pages: 1
Signer(s) Other Than Named Above: N\A

CERTIFICATE OF CONFORMITY

I, Portia A. Reed, an attorney duly licensed to practice law in the state of Arizona, do hereby certify that the jurat, oath and affirmation, or proof upon the foregoing Affidavit of __Michelle Feinman____ [AFFIANT], notarized in the State of Arizona, was taken in the manner prescribed by the laws of the State of Arizona and duly conforms to the laws thereof for the taking of oaths and acknowledgments.

Dated: May 30, 2023



Name: Portia A. Reed

VERIFICATION

STATE OF FLORIDA)
) ss:
COUNTY OF PALM BEACH)

Erica Rhine, being duly sworn, states that she has read the foregoing Petition and Complaint and knows the contents thereof; and that the same is true to her own knowledge, except as to matters therein that are stated upon information and belief, and as to those matters, she believes them to be true.

Erica Rhine

Sworn to before me this
26 day of May, 2023

Lina Marie Guerra

STATE OF FLORIDA

COUNTY OF Palm Beach

Sworn to (or affirmed) and subscribed before me by means of ☑ physical presence or ☐ online notarization, this 26th day of May, 2023, by Erica Rhine.

Tina Marie Guenot
(Signature of Notary Public - State of Florida)

TINA MARIE GUENOT
Notary Public - State of Florida
Commission # HH 158120
My Comm. Expires Nov 18, 2025
Bonded through National Notary Assn.

Tina Marie Guenot
(Notary of Notary Typed, Printed or Stamped)

_____ Personally Known OR

__✓__ Produced Identification

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Number of Pages (not including this page)

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

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 THE NEW YORK CITY ORGANIZATION OF PUBLIC SERVICE RETIREES, INC.

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.

Index No. _____

CERTIFICATE OF CONFORMITY

I, **GREGORY J. WRIGHT**, an attorney duly licensed to practice law in the **STATE OF FLORIDA**, do hereby certify that the jurat, oath and affirmation, or proof upon the foregoing Affidavit of **ERICA RHINE**, notarized in the **STATE OF FLORIDA**, was taken in the manner prescribed by the laws of the **STATE OF FLORIDA** and duly conforms to the laws thereof for the taking of oaths and acknowledgments.

Dated: **MAY 30, 2023**

Gregory J. Wright
Gregory J. Wright (May 30, 2023 17:05 CDT)
GREGORY J. WRIGHT

VERIFICATION

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

Beverly Zimmerman, being duly sworn, states that she has read the foregoing Petition and Complaint and knows the contents thereof; and that the same is true to her own knowledge, except as to matters therein that are stated upon information and belief, and as to those matters, she believes them to be true.

Beverly Zimmerman

BEVERLY ZIMMERMAN

SEE ATTACHED

JURAT

State of Nevada
County of Clark } ss.

Subscribed and sworn to (or affirmed) before me this
25 (Date) day of May (Month), 2023 (Year), by

Beverly Zimmerman
Name of Signer No. 1

Name of Signer No. 2 (if any)

ENRIE BALLESTEROS
Notary Public, State of Nevada
Appointment No. 19-2644-1
My Appt. Expires Jul 10, 2023

Signature of Notary Public

Exp : 7/10/23
Any Other Required Information (Residence, Expiration Date, etc.)

Place Notary Seal/Stamp Above

OPTIONAL

This section is required for notarizations performed in Arizona but is optional in other states. Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Verification
Document Date: May 25, 2023 Number of Pages: 1
Signer(s) Other Than Named Above:

CERTIFICATE OF CONFORMITY

I, __Alisa Steinhauer_____ an attorney duly licensed to practice law in the state of Nevada, do hereby certify that the jurat, oath and affirmation, or proof upon the foregoing Affidavit of ____Beverly Zimmerman_____ [AFFIANT], notarized in the state of Nevada, was taken in the manner prescribed by the laws of the State of Nevada and duly conforms to the laws thereof for the taking of oaths and acknowledgments.

Dated: May 30, 2023

Las Vegas, Nevada
City, State

Alisa J. Steinhauer
Name: Alisa Steinhauer