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Via NYSCEF

Justice Lyle E. Frank
Supreme Court of the State of New York
60 Centre Street
New York, NY 1007

Re: NYC Organization of Public Services, Inc. et al. v. Renee Campion et al.
Index No: 158815/2021
Law Dept. No. 2021-028140

Dear Justice Frank:

I write to clarify a response I made to a question posed yesterday by the Court, the nature of which I may have misunderstood.

Your Honor asked the following question: If the Court were to order that the current premium free option remain premium-free, would that result in a violation of the statutory cap? I construed Your Honor's question as asking if the current premium free option, Senior Care, if it were to remain premium free, would it violate the statutory cap. I answered that it would not.

If, however, Your Honor was asking whether it would be inconsistent with the statutory cap were the Court to allow MAPP to be implemented on April 1, and also order that Senior Care remain premium free, then the answer would be that indeed it would be imposing a mandate that is inconsistent with the statutory cap.

As we have presented, the Administrative Code only requires the City to offer one premium-free plan up to the maximum of the statutory cap. As the MAPP will meet that obligation, the City may require employee premium contributions for other plans, including Senior Care, as it has done for decades for other retiree plans. However, even assuming that Section 12-126 could be construed to require that the City must pay up to the statutory cap for all plans it offers, requiring the City to pay for Senior Care would still be inconsistent with the cap. That is because the applicable statutory cap would not be the one for the active employee HIP-HMO plan, as Petitioners argue, but the retiree HIP-HMO plan called HIP-VIP (HMO). The active employee plan is not designed for Medicare retirees and does not reflect the different cost structure applicable

to plans for Medicare retirees. If the HIP-HMO active employee plan were to be deemed to set the applicable cap for Medicare retirees, the City would be required to pay the full cost of all the retiree plans it offers, as plans for Medicare retirees are all substantially less costly than an active plan. This would fly in the face of decades of practice of offering more expensive plans requiring employee premium contributions, and provide the City a substantial disincentive to continue offering such plans. Therefore, the statutory cap for retirees must be based upon a retiree plan, and the HIP-HMO plan for retirees is currently the HIP-VIP. The current cost of HIP-VIP is \$7.50 per month. Thus, even if the City is required to pay up to the statutory cap for all programs offered to retirees, once the MAPP is implemented, there is no statutory basis for the Court to mandate that the City must further subsidize the cost of any plan offered to retirees that costs more than \$7.50 per month. Because the monthly cost of Senior Care is approximately \$191 per month, any order for the City to pay for the entire Senior Care premium would not be consistent with the cap.

Respectfully submitted,

/s/

William S.J. Fraenkel

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cc: All Counsels of records