

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

MARGARETANN BIANCULLI, JANET
KOBREN, MERRI LASKY, PHYLLIS
LIPMAN, BARRY SKOLNICK, on behalf of
themselves and all others similarly situated,
and the NYC ORGANIZATION OF PUBLIC
SERVICE RETIREES, INC.,

Plaintiffs,

v.

THE CITY OF NEW YORK OFFICE OF
LABOR RELATIONS, the CITY OF NEW
YORK, EMBLEMHEALTH, INC., and
GROUP HEALTH INCORPORATED (GHI),

Defendants.

Index No.:

VERIFIED COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiffs MARGARETANN BIANCULLI, JANET KOBREN, MERRI LASKY, PHYLLIS LIPMAN, and BARRY SKOLNICK (together, the “Retiree Plaintiffs”), on behalf of themselves and all others similarly situated, and the NYC ORGANIZATION OF PUBLIC SERVICE RETIREES, INC. (the “Organization”), bring this class action for damages, equitable relief, and injunctive relief against Defendants the CITY OF NEW YORK OFFICE OF LABOR RELATIONS (“OLR”), the CITY OF NEW YORK (together with OLR, the “City”), EMBLEMHEALTH, INC. (“Emblem”), and GROUP HEALTH INCORPORATED (“GHI”). Plaintiffs 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 THE ACTION

1. This case is about co-pays that are being unlawfully charged to Medicare-eligible (*i.e.*, elderly and/or disabled) retired City workers and their Medicare-eligible dependents who are enrolled in Senior Care, a health insurance plan administered by Emblem/GHI. The Retiree Plaintiffs seek relief on behalf of themselves and a proposed class of those who are enrolled in Senior Care. These Senior Care enrollees are referred to throughout this Complaint as the “Retirees.”

2. On January 1, 2022, the City and Emblem/GHI began to impose a \$15 co-pay on these Retirees every time they saw a healthcare provider or received a test, procedure, treatment, or therapy. The imposition of these co-pays is unprecedented: in the decades-long history of Senior Care, no such co-pays had ever been imposed. It is also: (i) a breach of the contract governing Senior Care (of which the Retirees are third-party beneficiaries); (ii) in defiance of a Court Order that specifically prohibits the City

from passing along any costs of Senior Care to Retirees; and (iii) deceptive, misleading, and in violation of numerous statutory and common law duties.

3. These illegal co-pays have collectively cost Retirees over \$55 million to date. They have also caused irreparable harm. The Retirees are all senior citizens and/or disabled. Many require frequent medical attention and live on relatively small pensions (*e.g.*, less than \$1,500 per month). Accordingly, many cannot afford the co-pays, which have now been accumulating for months. As a result, they have had to forego medical care and reduce spending on necessities such as food, housing, medicine, home health aides, heat, electricity, and transportation. In addition, they have suffered severe emotional and psychological distress due to their precarious financial and medical circumstances.

4. There are approximately 183,000 Retirees. They are the third-party beneficiaries of a contract (the “Contract”) between the City – which pays the entire premium for Senior Care – and Emblem/GHI.

5. The New York City Organization of Public Service Retirees, Inc. (the “Organization”) is a non-profit comprised of Retirees that was established to provide accurate information to Retirees about healthcare options, provide assistance to Retirees concerning their health insurance, and protect Retirees’ healthcare rights.

6. The co-pays illegally imposed by the City and Emblem/GHI are a poorly disguised attempt to shift a portion of the costs of medical care from the Defendants to Retirees. Each \$15 co-pay that is imposed on a Retiree is money that should have been paid to the healthcare provider by Emblem/GHI using funds from the City. Simply put, although couched as a “co-pay,” the \$15 charge is an illegal transfer to Retirees of what

otherwise would be the City's and Emblem/GHI's obligation; and it is a transfer that was explicitly prohibited by this Court.

7. Defendants have breached the Contract by charging co-pays that are not permitted and by failing to pay for the full 20% of healthcare claims required by the Contract. The Contract specifies that the 20% of healthcare costs not covered by Medicare – once a deductible is satisfied – are to be paid by Emblem/GHI using funds provided by the City. Imposing a \$15 co-pay illegally transfers a portion of the 20% provider cost from the Defendants to Retirees. This seemingly minor fee is extremely onerous for elderly individuals living on small, fixed pensions who require frequent medical attention – and it is not permitted under the Contract.

8. Moreover, the imposition of co-pays for Senior Care violates a clear and unequivocal order by this Court prohibiting the City from passing along any of the costs of Senior Care to Retirees. *See NYC Org. of Pub. Serv. Retirees, Inc. v. Champion*, Index No. 158815/2021, 2022 WL 624606, at *2 (Sup. Ct. N.Y. Cty. Mar. 3, 2022).

9. Defendants have also violated various other statutory and common law duties by forcing these co-pays on Retirees without their consent or advance warning, and by knowingly lying about them.

10. All Defendants 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. Indeed, each Defendant agreed, and took overt acts in furtherance of the agreement, to breach the Contract, unjustly enrich themselves, and

deceive Retirees through misrepresentations, misleading omissions, and false advertising regarding the Senior Care plan.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction pursuant to New York CPLR § 301. This Court also has the right to hear a class action pursuant to CPLR § 901 because (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 any 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.

12. This Court has personal jurisdiction over Defendants because New York City and its Office of Labor Relations can be found, reside, and/or transact business in New York State, and Emblem (and its GHI subsidiary) are headquartered in the State of New York and regularly conduct business in New York County.

13. Venue is proper in this Court because Defendants are residents of New York County, where Emblem and the City's Office of Labor Relations are headquartered.

THE PARTIES

A. Plaintiffs

14. Plaintiff Margaretann Bianculli is a resident of New York. She worked for the New York City Department of Education for many years and retired with a pension and health benefits in 2013. She and her husband receive Medicare and chose the GHI

Senior Care plan from among the City's healthcare offerings as their Supplemental insurance plan.

15. When Ms. Bianculli chose Senior Care, she was informed by the City's Summary Program Description ("SPD") and the Certificate of Insurance ("COI"), among other sources, that the 20% of medical expenses not covered by Medicare would be paid by Senior Care, once her deductible was satisfied. Neither the SPDs nor the COI ever included any information about co-pays.

16. Since January 1, 2022, Ms. Bianculli and her husband have seen doctors approximately 98 times and have been charged a co-pay by doctors – because Emblem/GHI withheld \$15 from their payment to the provider – for each visit.

17. These co-pays have caused Ms. Bianculli significant irreparable injury.

18. Plaintiff Janet Kobren is a resident of California. She worked as a teacher for New York City for many years and retired in 1989, deferring her pension and health benefits until 1998. She receives Medicare and chose the GHI Senior Care plan from among the City's healthcare offerings as her Supplemental insurance plan.

19. When Ms. Kobren chose Senior Care, she was informed by the City's SPDs and the COI, among other sources, that the 20% of medical expenses not covered by Medicare would be paid by Senior Care, once her deductible was satisfied. Neither the SPDs nor the COI ever included any information about co-pays.

20. Between January 1, 2022 and the end of October 2022, Ms. Kobren has seen healthcare service providers approximately 15 times and has been charged a co-pay for services by doctors and other healthcare providers – because Emblem/GHI withheld \$15 from their payment to the provider – for each visit. Ms. Kobren had an additional 21

appointments with medical providers scheduled between the end of October and the end of the year. Earlier this month she was diagnosed with a condition that will require surgery before the end of the year. So she will be charged at least 9 more co-pays plus whatever copays that will accrue due to the surgery and follow up treatments.

21. Since January 1, 2022, Ms. Kobren has seen doctors approximately 15 times and has been charged a co-pay by doctors – because Emblem/GHI withheld \$15 from their payment to the provider – for each visit. Ms. Kobren has an additional 21 appointments with medical providers scheduled between now and the end of the year, and will be charged at least 21 more co-pays.

22. These co-pays have caused Ms. Kobren significant irreparable injury.

23. Plaintiff Merri Lasky is a resident of New York. She worked as an Assistant District Attorney for Queens County for many years and retired with a pension and health benefits in 2018. She receives Medicare and chose the GHI Senior Care plan from among the City's healthcare offerings as her Supplemental insurance plan.

24. When Ms. Lasky chose Senior Care, she was informed by the City's SPDs and the COI, among other sources, that the 20% of medical expenses not covered by Medicare would be paid by Senior Care, once her deductible was satisfied. Neither the SPDs nor the COI ever included any information about co-pays.

25. Since January 1, 2022, Ms. Lasky has seen doctors approximately 30 times and has been charged a co-pay by doctors – because Emblem/GHI withheld \$15 from their payment to the provider – for each visit. Her husband, who is also on her plan, has incurred another 10 co-pays. Ms. Lasky will soon be charged co-pays for another 10 visits related to ongoing treatment.

26. These co-pays have caused Ms. Lasky significant irreparable injury.

27. Plaintiff Phyllis Lipman is a resident of New York. She worked as a teacher for New York City for many years and retired with a pension and health benefits in 2001. She receives Medicare and chose the GHI Senior Care plan from among the City's healthcare offerings as her Supplemental insurance plan.

28. When Ms. Lipman chose Senior Care, she was informed by the City's SPDs and the COI, among other sources, that the 20% of medical expenses not covered by Medicare would be paid by Senior Care, once her deductible was satisfied. Neither the SPDs nor the COI ever included any information about co-pays.

29. Since January 1, 2022, Ms. Lipman has seen doctors approximately 49 times and has been charged a co-pay by doctors – because Emblem/GHI withheld \$15 from their payment to the provider – for each visit. Between now and the end of the year, Ms. Lipman has 19 scheduled appointments with doctors, and will be charged at least 19 more co-pays.

30. These co-pays have caused Ms. Lipman significant irreparable injury.

31. Plaintiff Barry Skolnick is a resident of Minnesota. He worked as a senior executive for New York City for many years, principally in the Department of Housing Preservation and Development. He retired in 2009 with a pension and health benefits. He receives Medicare and chose the GHI Senior Care plan from among the City's healthcare offerings as his Supplemental insurance plan.

32. When Mr. Skolnick chose Senior Care, he was informed by the City's SPDs and the COI, among other sources, that the 20% of medical expenses not covered by

Medicare would be paid by Senior Care, once his deductible was satisfied. Neither the SPDs nor the COI ever included any information about co-pays.

33. Since January 1, 2022, Mr. Skolnick has seen doctors approximately 90 times and has been charged a co-pay by doctors – because Emblem/GHI withheld \$15 from their payment to the provider – for each visit. Based on scheduled visits, Mr. Skolnick will be charged for at least 10 additional co-pays before the end of the year.

34. These co-pays have caused Mr. Skolnick significant irreparable injury.

35. Plaintiffs Bianculli, Kobren, Lasky, Lipman, and Skolnick are collectively referred to as the “Retiree Plaintiffs.” Together with the class members, they are referred to as the “Retirees.”

36. 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. It has over 16,000 members and its President is Marianne Pizzitola.

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

38. Tens of thousands of senior citizens and disabled retirees rely on the Organization for access to accurate information; information that is often not available from the City, Emblem/GHI, or Retirees’ former unions.

39. Since January 1, 2022, when Defendants first implemented co-pays on Senior Care members, the Organization has fielded hundreds of inquiries from confused,

concerned Retirees about co-pay obligations. Providing accurate information to these distressed seniors has required countless hours of effort by Organization volunteers.

B. Defendants

40. 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.

41. Defendant City of New York is the Retirees’ former employer. It is statutorily and contractually obligated to provide Retirees with certain benefits, and its attempt to avoid those obligations is unlawful.

42. Defendant EmblemHealth, Inc. (“Emblem”) is a domestic not-for-profit corporation registered with the New York Department of State. It is headquartered in New York City.

43. Defendant Group Health Incorporated (“GHI”) is a wholly owned subsidiary of EmblemHealth, Inc.

FACTUAL BACKGROUND

44. The Retiree Plaintiffs and the class members (collectively, the “Retirees”) are mostly senior citizens over the age of 65 who are enrolled in the federal Medicare program. A small portion of the proposed Class (defined below) are people who are also enrolled in Medicare even though they are under age 65 because their disability status qualifies them for Medicare.¹

¹ 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.

45. The Retirees are former New York City employees who satisfied the City's employment-longevity requirements, making them eligible for a pension and retirement benefits.

A. Retiree Health Insurance is Guaranteed by Statute

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

47. The primary governing statute is New York City Administrative Code § 12-126 ("Section 12-126"), which 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 is approximately \$859 per person per month. There is a higher cap for family coverage.

48. Section 12-126 also requires the City to reimburse Retirees for their Medicare Part B premiums.

B. The Context of Medicare

49. Medicare is available to people who are 65 years old or older. Some people under the age of 65, such as first responders who are seriously injured on the job, can become Medicare-eligible even though they are under 65.

50. 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 workers and retirees to enroll in Medicare once they become eligible.

51. Medicare is at once fairly simple and yet extremely hard to understand. There are four parts to Medicare, each covering 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, and it is partly paid for by the federal government and partly by the individual based on a sliding scale pegged to the individual's income. Part D is a drug benefit, is optional, and is partly paid for by the individual, with the amount depending upon specific drugs and deductibles. Part C is known as Medicare Advantage, and it is a combination of Parts A, B, and sometimes D. It is mostly paid for by the federal government with some contribution, usually by the individual or a former employer, and it is administered by private insurance companies.

52. This case involves “traditional” Medicare – Parts A and 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.

53. For decades, insurance companies have been marketing Medicare “Supplemental” or “Medigap” insurance plans that covered the uncovered 20%. These plans are popular and are widely considered to be essential. One of them—Senior Care—is at the center of this case.

54. For more than 50 years, New York City has offered its Medicare-eligible retirees one or more Medicare Supplemental plans. The plan at issue in this lawsuit is the GHI Senior Care plan (“Senior Care”), and it is offered by Emblem through its wholly owned subsidiary GHI.

55. The vast majority of the City's Medicare-eligible retirees are enrolled in Senior Care. The remaining minority are enrolled in one of the dozen or so other plans offered by the City as part of the NYC Health Benefits Program.

56. According to the NYC Office of the Actuary's 2022 annual report of the Health Benefits Program, there were approximately 183,000 Retirees and Medicare-eligible dependents enrolled in Senior Care in 2021.

57. Retirees overwhelmingly choose Senior Care for very clear reasons: all healthcare providers who accept Medicare-eligible patients accept Senior Care; it is simple to administer; and there are no prior authorization protocols imposed or administered by private insurance companies. And, until the Defendants' recent illegal action, there were no co-pays.

58. The reason a small minority of other retirees choose one of the other offered Medicare Advantage options typically involves drug coverage. Some unions have special benefit funds which cover drugs for Retirees; others do not. The Medicare Advantage plans include a drug plan.²

59. The cost to the City of the Senior Care plan is approximately \$191 per person per month – far below Section 12-126's statutory cap of \$859 per person per month.

60. 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").

61. The first 80% of the payment to the provider is paid by Medicare. The remaining 20% is paid for either by the individual or by a Supplemental insurance policy covering the patient.

² Medicare Advantage plans are not relevant to this lawsuit except as context: it was the City's attempt to force Retirees into a new Medicare Advantage plan that triggered Retirees' Article 78 proceeding last year.

C. The City's Contract with Emblem

62. On February 25, 2000, the City entered into a contract (the "Contract") with GHI whereby the City agreed to pay GHI to provide health insurance benefits to active and retired City employees and their dependents, all of whom are referred to in the Contract as "Members." The initial term of this Contract was from July 1, 1997 through June 30, 2002. (Ex. 1.) The Contract was set to remain in effect "for the duration of the first Contract Period [(July 1, 1997 through June 30, 2002)] and thereafter, unless this Contract is terminated as provided herein." *Id.* at PDF p.4

63. Upon information and belief, this Contract was extended for multiple-year periods, and was transferred to Emblem when Emblem purchased GHI. The Contract has not been terminated and therefore remains in effect today.

64. The Contract specifies that the "Group Policy" includes "any certificates of insurance, riders and/or financial agreements amending that Contract." (Ex. 1 at § 1.18.)

65. The City and GHI have entered into various Amendments and Riders to the Contract which remain in effect today. All but one of these Amendments and Riders are contained in the current GHI Certificate of Insurance ("COI"), which is available on Emblem's website. The sole Rider not incorporated into the COI itself is the "Funding Rider" described below. (Ex. 2.)

66. In 2014, the City and GHI entered into a "CITY OF NEW YORK FUNDING RIDER" (the "Funding Rider") which changed how the City paid the insurance company for the insurance plans it provided. This agreement commenced on July 1, 2014 and was originally set to expire on June 30, 2015. However, it set forth an "Agreement Period" that continued "thereafter, any succeeding twelve (12) month fiscal year period

commencing on July 1st through June 30th.” (Ex. 3.) Upon information and belief, this funding agreement continues in force through the present.

67. The Funding Rider describes a funding mechanism – including for Senior Care – known as a “Minimum Premium Plan” (“MPP”). Under the MPP, GHI must pay claims charged by medical providers directly from a City account, up to a “preset Monthly Trigger amount.” If that Monthly Trigger amount is exceeded, GHI pays the medical provider’s claim and then bills the City for that amount plus an agreed-upon premium.

68. In short, payments to medical providers are paid by GHI either out of a City account controlled by GHI, or out of GHI’s coffers and then charged back to the City in the form of a premium. Regardless of whose account is used to pay the medical provider – the City’s or GHI’s – Defendants, not Retirees, are contractually obligated to pay.

69. By imposing a \$15 co-pay on a Retiree for a given doctor’s visit, diagnostic test, medical procedure, or other healthcare event, GHI’s payment to the healthcare provider is reduced by \$15. That \$15 co-pay being paid to the provider by the Retiree is a claim expense that would otherwise have been paid by Defendants.

70. The Contract describes the benefits that GHI must provide to City employees, retirees, and their dependents (the “Members”) who enroll in one of the GHI plans. The Contract states that “[e]ach Member shall be entitled to the medical benefits described in the Certificate(s) of Insurance and any riders or agreements made thereto attached hereto and made a part hereof.” (Ex. 1 at 4.)

71. The operative GHI COI is 159 pages long and is available to the public on Emblem/s website. The COI explains the different sets of benefits provided to (i) employees and non-Medicare-eligible retirees enrolled in GHI’s Comprehensive

Benefits Plan (“CBP”) and (ii) Medicare-eligible Retirees enrolled in GHI’s Senior Care plan (“Senior Care”). To be clear, CBP and Senior Care are two different plans, with different terms, serving two mutually exclusive groups of Members (employees and non-Medicare-eligible retirees are in CBP; Medicare-eligible Retirees are in Senior Care).³ The two plans both happen to be addressed in the same COI because they are both administered by GHI.

72. On the 14th page of the pdf of the COI, it states in all-capital letters, “THIS CERTIFICATE IS NOT A MEDICARE SUPPLEMENTAL PLAN.” (Ex. 2). The next line on the page states, “If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from GHI.” *Id.*

73. Contrary to Emblem/GHI’s assertion in the COI, there is no publicly available “Guide to Health Insurance for People with Medicare” from GHI.

74. There is no separate Certificate of Insurance for the Senior Care plan available on the Emblem website or on file with the New York State Department of Financial Services.

75. Most of the COI is devoted to the benefits of the GHI Comprehensive Benefits Plan (“CBP”) for active employees and non-Medicare-eligible retirees.

76. The benefits, procedures, and limitations of the CBP plan for active employees and non-Medicare-eligible retirees are very different from the benefits and procedures for Medicare-eligible retirees.

³ The fact that CBP and GHI are separate plans is made clear in the COI as well as countless other sources, including Emblem’s website and the SPDs. See <https://www.emblemhealth.com/resources/city-of-new-york-employees> (Emblem’s website); Ex. 4 (2022 SPD) at 30, 65.

77. Employees and non-Medicare-eligible retirees—unlike Medicare-eligible Retirees—do not receive any healthcare benefits through Medicare. Accordingly, CBP provides them with comprehensive health insurance coverage. Such coverage includes broader benefits and different terms than Senior Care, which merely supplements the benefits provided by Medicare. One such difference between CBP and Senior Care has always been co-pays. As the COI explains, many of the services covered under CBP require co-pays. *See* Ex. 2 at 9-10, 16, 22, 94. These co-pay amounts have increased over time, as reflected in COI riders. *See, e.g., id.* at 94, 131 (2004 rider showing the co-pay increase that became effective that year for employees and non-Medicare-eligible retirees enrolled in CBP).

78. The benefits provided to Medicare-eligible Retirees under Senior Care are addressed in a separate section of the COI, specifically Section Fourteen. *See id.* at 37-38 (Section Fourteen), 97-98 (“Rider to Amend the GHI Senior Care Benefits” listed in Section Fourteen). As the COI explains, when Retirees turn 65, they “become eligible for Medicare,” and if they enroll in Senior Care, they “receive only those benefits listed in this Section Fourteen.” *Id.* Section Fourteen lists various services—such as doctors’ visits, surgery, diagnostic procedures, laboratory tests, radiation therapy, and chemotherapy—that are covered under Senior Care. *Id.* at 38, 98. None of them requires co-pays. *Id.*

79. The Rider to Amend the GHI Senior Care Benefits, which became effective April 1, 2004 and remains in force today, states:

A. Covered Services. If you receive any of the services listed below, GHI will cover 20% of the reasonable charge as determined by Medicare, after Medicare has paid 80% of the reasonable charge after you meet the applicable Part B and GHI deductibles. You are

not covered for the Medicare Part B (medical) deductible. After the Part B deductible has been met, Medicare will pay 80% of the reasonable charge of your covered service. After you meet an additional \$50 deductible, GHI will pay the 20% balance.

80. Nowhere in the Rider does it state that Retirees must, or may, pay any co-pays.

81. In other words, the COI requires Senior Care to fully pay the 20% of medical providers' claims that Medicare does not cover. It does not allow, and in fact prohibits, these costs to be passed along to Retirees through co-pays.⁴

82. As discussed below, the SPD does state that Retirees under the Senior Care plan would have to pay a \$50 co-pay for emergency room services (which are provided by a separate insurance company, Empire BlueCross BlueShield). That co-pay requirement does not appear in the GHI COI. Upon information and belief, it is contained in the Empire BlueCross BlueShield Certificate of Insurance which covers the hospitalization portion of the Senior Care plan.

83. Additional riders follow in the COI, and they cover drug benefits and mental health benefits. Nowhere in those riders does it say that Medicare-eligible retirees must, or may, pay any co-pays.

84. Thus, in sum, the COI has long allowed co-pays for active employees and non-Medicare eligible retirees enrolled in the CBP plan. But the COI—and, thus, the

⁴ The COI states that Medicare-eligible Retirees who want special prescription drug coverage outside of Senior Care may be subject to co-pays. *Id.* at 39-40, 100. Again, traditional Medicare does not cover prescription drugs; nor do Supplemental insurance plans such as Senior Care. Some unions offer retirees access to separate drug programs; others do not.

Contract, which incorporates the COI by reference—has never allowed co-pays for Senior Care.

85. Starting in January 2022, Retirees who were enrolled in Senior Care were suddenly charged co-pays every time they saw a healthcare provider or received a test, procedure, treatment, or therapy. However, the COI was never amended to allow such co-pays. Because the COI sets forth the contractual obligations of the City and GHI/Emblem with respect to Senior Care benefits for Retirees, the imposition of co-pays constitutes a clear breach of the Contract.

D. The City Tries to “Save” Money

86. 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.⁵ Approximately \$3.2 billion was for retirees, including both Medicare-eligible and non-Medicare-eligible retirees.⁶

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

88. In July 2021, the Municipal Labor Committee (“MLC”) – a purely advisory group comprised of municipal labor union representatives – secured an unrecorded voice vote of various unions to impose a material change on retiree health benefits that it had negotiated with the City. In August 2021, the City announced that beginning on January 1, 2022, all retirees who did not affirmatively opt out would be automatically disenrolled

⁵ See <http://www.centernyc.org/urban-matters-2/2021/1/20/new-york-city-over-pays-for-health-insurance-city-workers-still-get-a-bad-deal> (last accessed November 28, 2022).

⁶ See testimony of Ex. 5 Jonathan Rosenberg, New York City Independent Budget Office, November 29, 2018.

from the insurance plans they had chosen and automatically enrolled in a new Medicare Advantage Plan (“MAP”) specially created by the MLC, the City, and an “Alliance” of two insurance companies: Defendant Emblem and Anthem Blue Cross Blue Shield.

89. Under the City’s planned healthcare overhaul, retirees who wished to opt out of the new MAP and remain in their current insurance plan could do so, but they would have to pay the premium: \$191 per person per month.

90. The City’s motivation was simple: by switching Retirees to a federally funded Medicare Advantage plan from their Senior Care Supplemental plan, the City could shift the cost of their healthcare – which the City claimed to be approximately \$600 million per year – from the City to the federal government (or for those who wanted to remain in Senior Care, to the Retirees themselves).

91. The City apparently believed that by threatening Retirees with having to pay \$191 per person per month to remain in Senior Care and by falsely touting the new MAP as free and better than Senior Care, Retirees would just go along with the new program. They did not.

92. On September 26, 2021, an ad hoc group of Medicare-eligible retirees – including some of the same people serving as class representatives in this lawsuit – filed an Article 78 Petition against the City.

93. The retirees won.

94. The Petitioners in that 2021 Article 78 proceeding included name plaintiffs “on behalf of themselves and others similarly situated.” This group included all of the Retirees in this class action, plus other Medicare-eligible retirees who had City-paid insurance plans other than Senior Care.

E. The Retirees' Victorious Lawsuit

95. The retirees' 2021 challenge to the forced imposition of a Medicare Advantage plan was based on three arguments: (1) New York City Administrative Code § 12-126 required the City to pay for any health insurance plan offered by the City up to the HIP HMO statutory cap; and the cost of the Senior Care plan (\$191 per person per month) was far below that cap, which is currently \$859 per person per month; (2) retirees' existing health insurance benefits were contractually protected, as evidenced by the SPDs, statements by the City, and decades of uninterrupted past practice; and (3) the City's attempt to impose the new MAP violated the New York State Retiree Health Insurance Moratorium Act (the "Moratorium Act").⁷

96. The 2021 case, with Index number 158815/2021, was assigned to New York County Supreme Court Justice Lyle Frank. The Court held numerous hearings and considered thousands of pages of evidence before issuing its rulings.

F. The Court's Rulings

97. On October 21, 2021, this Court ruled that:

The MLC could not intervene in the case. The MLC had put forth the argument that it represented the interests of the Retirees when it negotiated with the City to force the MAP on them. Despite the black letter law that retired workers are not represented by their former unions, the MLC argued that it represented Retirees.

The City and the Alliance's MAP implementation plan was "irrational, and thus arbitrary and capricious."

The "status quo enrollment" had to be maintained until the Court ruled on the underlying arguments.⁸

⁷ Chapter 504 Part B, section 14 of the 2009 session laws

⁸ *NYC Organization of Public Service Retirees v. Renee Campion*, Index No. 158815/2021, NYSCEF Doc. No. 112.

98. Following additional hearings and the submission of hundreds of additional affidavits and hundreds of pages of evidence, the Court issued its final ruling on the Petition on March 3, 2022. The Court ruled that the City must continue to pay the full costs of Senior Care. Specifically, the Court ordered: “The [City] is permanently enjoined from passing along **any costs** of the New York City retirees’ current plan to the retiree or to any of their dependents, except where such plan rises above the H.I.P.-H.M.O. threshold, as provided by New York City Administrative Code Section 12-126.”⁹

99. Within days, the City and the Alliance withdrew the proposed MAP.

100. On November 22, 2022, the Appellate Division, First Department unanimously affirmed the Supreme Court’s decision in favor of the retirees.

G. Defendants Ignore the Court Order and Impose Co-Pays

101. Despite the Court’s March 3, 2022 Decision and Order, the Defendants failed to halt the co-pays being charged to Retirees or reimburse Retirees for co-pays they had been charged since January 1, 2022. These co-pays constitute “costs” that the Court prohibited from being charged to Retirees.

102. The services for which Retirees are being charged co-pays include – but are not limited to – primary care provider visits, specialist visits, x-rays, laboratory tests, and several other categories of medical and healthcare services. Essentially, co-pays are being charged to Retirees every time they see a healthcare provider, receive a medical test, undergo a procedure, or obtain any other medical care or healthcare service.

⁹ *NYC Organization of Public Service Retirees v. Renee Campion*, Index No. 158815/2021, NYSCEF Doc. No. 215 (emphasis added).

103. Charging Retirees for co-pays is a transparent and unlawful attempt by the City to evade the financial obligations of Section 12-126. Had GHI/Emblem increased the Senior Care premium charged to the City – to properly account for the tens of millions of dollars in healthcare costs improperly imposed on Retirees in the form of co-pays – the resulting premium would continue to be far below the HIP HMO statutory cap, which the City is required to pay.

H. Fall Open Enrollment in 2020 and 2022

104. The City offers all of its employees, retirees, and their dependents a choice of health insurance plans through the NYC Health Benefits Program.

105. The City offers Retirees a choice of health insurance plans that have a range of different benefits in order to satisfy Retirees' various medical and financial needs. These choices are published, identified, and described by Defendant OLR annually in the SPD.

106. The SPD is the official, authoritative source of information about the City's healthcare offerings. It is supposed to provide employees and retirees an accurate summary of all of the healthcare benefits and financial costs (including co-pays) associated with each healthcare plan, thus allowing individuals to competently evaluate and compare their healthcare options and select the one that best serves their needs.

107. Because individual plans occasionally change, the City tells Retirees that the benefits they are entitled to are those "in place at the time you retire."

108. Although City pension eligibility requirements and amounts differ from job to job – for example, the number of years one must be on the job is different for teachers and police officers – the basic health benefit for all NYC retirees is exactly the same.

That benefit is the right to a health insurance plan of one's choosing from among those offered by the City, paid for by the City up to the HIP HMO statutory cap.

109. Some retirees receive additional benefits from their former unions. Some unions offer retirees drug plans, others offer dental plans, and still others offer vision plans. These benefits differ from profession to profession, and are offered by – and sometimes subsidized by – the various union welfare funds. Those benefits are not at issue in this lawsuit.

110. Up until this year, retirees could only switch plans during the fall open enrollment period in even-numbered years. **Ex. 6** (2020 SPD) at 18. This meant that, because 2021 was an odd-numbered year, Retirees could not transfer in or out of Senior Care during the 2021 fall open enrollment period. In other words, Retirees were stuck with whatever enrollment decision they made in the fall of 2020 for two years (2021 and 2022).

111. Retirees were able to participate in the fall open enrollment period this year (which ends November 30), thus allowing them to choose whatever plan they wanted for 2023.

I. Retirees' Reliance on the SPD

112. Retiree benefits are spelled out in the City-published SPD. This 80-plus-page booklet, published annually, is the official, authoritative document describing the plans and benefits available to active and retired City workers. Although the SPD is published by the City, Defendants Emblem/GHI prepared the sections describing their insurance offerings. The SPD also details the procedures active employees and retirees must follow to take advantage of their health benefits.

113. The SPD makes clear what benefits retirees are entitled to:

The following summarizes eligibility policy as of the date of this publication. Your actual eligibility for benefits will be determined by the City policy in place at the time you retire, and the benefits applicable to you should be ascertained at that time.

114. Both active employees and retirees rely on the SPD to make decisions about which insurance plan is right for them. The SPD is the principal informational and advertising vehicle used by Defendants to inform Retirees of their health insurance options. Defendants know, and intend, that Retirees rely on the SPD when making their healthcare enrollment decisions.

115. The SPD is published by the City annually, and made available to active employees and retirees in October, in advance of the fall open enrollment period, so that they can use it to compare plans and make an informed healthcare enrollment decision.

116. Descriptions of the various insurance plans are prepared by the individual insurance companies and provided to the City for publication in the SPD.

117. Retirees rely on the SPD for accurate and complete information prior to making their biennial choice of healthcare plan.

118. When making their healthcare enrollment decisions in the fall of 2020 and the fall of 2022, Retirees relied on the SPDs published online in October of those years.

119. The October 2020 SPD did not mention that Senior Care would impose co-pays for healthcare visits, medical tests, procedures, treatments, and therapies. Ex. 6 (2020 SPD) at 68.

120. The October 2022 SPD similarly makes no mention of Senior Care co-pays for healthcare visits, medical tests, procedures, treatments, or therapies. Ex. 4 (2022 SPD) at 68.

121. For decades up until this year, Senior Care never charged co-pays for healthcare visits, medical tests, procedures, treatments, or therapies.

122. The 2020 and 2022 SPDs did disclose two types of co-pays that may be lawfully charged to Retirees enrolled in Senior Care. The first is for emergency room care, a service provided by Empire BlueCross BlueShield, not GHI. Ex. 6 (2020 SPD) at 68; Ex. 4 (2022 SPD) at 68. The second is for Retirees who choose special prescription drug coverage from GHI, an option that is outside of the basic Senior Care plan. *Id.* The COI specifically allows co-pays for such drugs. Ex. 2 at 100.

123. The 2020 and 2022 SPDs represented that Senior Care would pay the full 20% of healthcare charges that Medicare does not cover. Ex. 6 (2020 SPD) at 68; Ex. 4 (2022 SPD) at 68.

124. The SPDs did, however, disclose the co-pays applicable to other healthcare plans. Ex. 6 (2020 SPD) at 31-80; Ex. 4 (2022 SPD) at 32-81. That includes the co-pays for CBP. Ex. 6 (2020 SPD) at 44-45; Ex. 4 (2022 SPD) at 44-45.

125. During a very narrow window of time in December 2021, Defendants posted online a unique version of the SPD that actually disclosed the existence of co-pays for Senior Care. *See* Ex. 7 at 68 (SPD dated December 2021). This version stated with respect to Senior Care: “PCP and Specialist services are subject to a \$15 copay.” *Id.* This disclosure was posted after the close of the 2021 open enrollment period (in which retirees could not participate because it was an odd-number year), and removed within weeks.

126. In January 2022 and continuing thereafter, the SPD again made no mention of the \$15 co-pays. *See* Ex. 8 (SPD dated January 2022) at 69.

127. Retirees are currently enrolled in Senior Care because of the enrollment decision they made in the fall of 2020. When they made that decision, they were informed by the SPD—as well as by the COI and Emblem’s website—that there would be no co-pays for Senior Care. Thus, when Defendants began charging co-pays for Senior Care in 2022, they did so without Retirees’ consent and without prior notice.

J. Senior Care Insurance Cards Mislead Retirees and Doctors

128. Emblem sends an insurance card to every Retiree enrolled in the Senior Care plan for the Retiree to present at doctors’ offices. The cards sent to Retirees for use in 2022 make no mention of any co-pays. (Exhibit 109

129. By contrast, insurance cards sent to active employees and non-Medicare-eligible retirees enrolled in the GHI CBP plan for use in 2022 do reference co-pays. (Exhibit 10).

130. Retirees rely on their Senior Care insurance card to tell them and their medical providers accurate information, including the fact that no co-pay is to be charged.

131. Because the Senior Care cards issued for use in 2022 make no mention of co-pays, many Retirees were not charged co-pays at the doctor’s office originally when they saw their doctors. It was only months later, when they received Explanations of Benefits from Emblem, that they learned they owed money for all of their healthcare visits since the beginning of the year.

132. Retirees have been receiving bills from their doctors – and sometimes letters from collection agencies – telling them they owe co-pays for every visit, test, procedure, treatment, and therapy.

K. The Impact of Co-Pays on Retirees

133. Retirees seek medical attention, on average, at least twice per month. This conservative estimate is based on a survey of Medicare-eligible retirees conducted in late May and early June 2022 by Plaintiffs. (Ex. 11.) More than 1,000 retirees responded to the survey.

134. Since January 1, 2022, Defendants have been unlawfully charging Retirees the \$15 co-pay every time they see a healthcare provider, undergo a medical test, or receive a covered procedure, treatment, or therapy.

135. Retirees report that they are often charged multiple co-pays for a single visit: one co-pay for the doctor visit, another for a diagnostic test, and a third for a consulting specialist to read the test.

136. It is conservatively estimated, based on the survey, that Retirees collectively incur approximately \$5 million in co-pays per month, meaning that they have been unlawfully charged at least \$55 million to date.

137. Because most Retirees live on limited, fixed incomes and need to see healthcare providers on a frequent basis, the imposition of \$15 copays causes irreparable harm. It deters and prevents many Retirees from seeking medical care when they need it and it forces many to reduce spending on other necessities such as food, medicine, housing, clothing, and travel. And it causes Retirees severe emotional and psychological distress.

138. Had Retirees known that Senior Care would include a \$15 co-pay every time they sought medical care, many would have chosen a different plan, one with no co-pays or lower co-pays. And those who would have enrolled despite the co-pays would have appropriately altered their spending, savings strategies, investments, and other

financial and medical decision-making in advance so as to better handle this onerous, illegal, unprecedented, and unexpected expense.

CLASS ACTION ALLEGATIONS

139. This action is brought by the Retiree Plaintiffs individually and on behalf of a class (the “Class”) pursuant to CPLR § 901. The Class is defined as follows:

All persons enrolled in the GHI Senior Care plan as of or after January 1, 2022.

140. The Class consists of approximately 183,000 retired Medicare-eligible 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 Defendants.

141. The claims asserted by the Retiree Plaintiffs are typical of the claims of the Class.

142. The Retiree Plaintiffs will fairly and adequately protect the interests of the Class and do not have any interests antagonistic to those of the Class members.

143. The Retiree Plaintiffs have retained experienced attorneys who are competent to serve as Class counsel.

144. The Retiree Plaintiffs request that the Court afford Class members with notice and the right to opt out of any Class certified in this action.

145. 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 City and Emblem/GHI had the right to impose \$15 co-pays on the Retiree Plaintiffs and the Class members;

whether the representations by the City and Emblem/GHI with respect to Senior Care co-pays were false or misleading under General Business Law (“GBL”) §§ 349 and/or 350, New York Insurance Law § 4226(a), and/or common law;

whether such false or misleading representations were willful and knowing;

whether Retiree Plaintiffs and Class members are entitled to receive actual damages as a result of the unlawful conduct by Defendants alleged herein, and the methodology for calculating those damages;

whether Retiree Plaintiffs and Class members are entitled to receive statutory damages and/or penalties pursuant to GBL §§ 349 and 350 and whether trebling is appropriate;

whether Retiree Plaintiffs and Class members are entitled to receive punitive damages for the City’s willful violation of the Court’s Order in *NYC Organization of Public Service Retirees v. Champion*;

whether Retiree Plaintiffs and Class members conferred a benefit on Emblem/GHI by enrolling in the Senior Care plan; and

whether equity and good conscience require restitution to Retiree Plaintiffs and Class members and/or the establishment of a constructive trust, and the amount of such restitution or constructive trust.

146. A class action is superior to other available methods for the fair and efficient adjudication of this controversy for at least the following reasons:

Given the complexity of issues involved in this action, the expense of litigating the claims, and the money at stake for any individual Class member, few, if any, Class members could afford to seek legal redress individually for the wrongs that Defendants have committed against them; when Defendants’ liability has been adjudicated, claims of all Class members can be determined by the Court;

this action will cause an orderly and expeditious administration of the Class claims and foster economies of time, effort, and expense, and ensure uniformity of decisions;

without a class action, many Class members would continue to suffer injury while the City and Emblem/GHI retain the substantial proceeds of their wrongful conduct; and

this action does not present any undue difficulties that would impede its management by the Court as a class action.

FIRST CAUSE OF ACTION

Breach of Contract With Respect to All Defendants On Behalf of the Retiree Plaintiffs, Individually, and the Class

147. The Retiree Plaintiffs incorporate by reference all allegations in this Complaint and restate them as if fully set forth herein.

148. A Contract exists between the City and Emblem to provide a Medicare Supplemental plan known as GHI Senior Care to Medicare-eligible Retirees.

149. That Contract comprises the document entitled “A Contract Between The City of New York and Group Health Incorporated” (Exhibit 1); the document entitled “MacBride Principles Provisions for New York City Contractors” (Exhibit 12); the document entitled “City of New York Funding Rider” (Exhibit 3); and the Certificate of Insurance which contains the “Rider to Amend the GHI Senior Care Benefits for City of New York Employees and Retirees effective April 1, 2004” (Exhibit 2). The City, OLR, Emblem, and GHI are parties to the Contract. In addition, the City, Emblem, and GHI are parties to the Funding Rider.

150. Retirees are third-party beneficiaries to the Contract between the City and Emblem/GHI, and have standing to sue the Defendants.

151. The Contract does not permit the imposition of co-pays on Medicare-eligible Retirees.

152. Defendants breached that Contract by imposing \$15 co-pays on the Retirees beginning on January 1, 2022, and they continue to breach that Contract through the present.

153. Defendants Emblem and GHI breached the Contract by failing to properly pay medical providers for claims incurred when they treated the Retirees. Emblem/GHI instead withheld \$15 of each claim and required the Retiree to pay that \$15 as a co-pay every time he or she saw a healthcare provider or received a test, procedure, treatment, or therapy.

154. Defendant the City breached the Contract by allowing Emblem/GHI to improperly withhold \$15 of each payment owed to a medical provider; and then allowing Emblem/GHI to inform Retirees that they owed the medical provider \$15 as a co-pay – in violation of the Contract.

155. Retirees have been and are being harmed by the imposition of \$15 co-pays for necessary medical care.

156. Retirees have been collectively charged more than \$55 million to date in unlawful co-pays, and continue to incur damages of at least \$5 million per month.

157. As a result of Defendants' breach of Contract, the Retiree Plaintiffs and the Class have suffered significant monetary and non-monetary injuries. Among other injuries, the imposition of unlawful co-pays has caused millions of dollars in damages; forced Retirees to forego medical care and reduce spending on necessities; and caused Retirees to suffer severe emotional and psychological distress.

SECOND CAUSE OF ACTION

Unjust Enrichment With Respect to All Defendants On Behalf of the Retiree Plaintiffs, Individually, and the Class

158. The Retiree Plaintiffs incorporate by reference all allegations in this Complaint and restate them as if fully set forth herein.

159. Defendants have been and continue to be unjustly enriched because of the \$15 co-pays being unlawfully charged to Retirees. By forcing Retirees to pay a portion of the healthcare expenses that Defendants are obligated to pay, Defendants have enriched themselves. Such enrichment is unjust for multiple reasons.

160. First, Defendants engaged in an unjust bait and switch.

161. In the fall of 2020, elderly and disabled retired City workers were forced to make a healthcare enrollment decision that would bind them for the next two years (2021 and 2022). After diligently reviewing the October 2020 SPD to determine which one of the various health insurance options would best fit their medical and financial circumstances, the vast majority chose to enroll in the Senior Care plan, in part because it was one of the few plans that did not charge co-pays. Indeed, it had never before charged co-pays. For cash-strapped Retirees who might need frequent medical attention, this was a wise choice.

162. Knowing that Retirees would be bound by their enrollment decision through December 2022, Defendants promised one thing and delivered another. Specifically, they promised no co-pays for Senior Care in the 2020 SPD and the COI, and then, without providing Retirees any warning or opportunity to switch plans, they began imposing co-pays for Senior Care in January 2022 (in the midst of a raging pandemic that disproportionately affected senior citizens and the disabled). Retirees did not consent to these unlawful charges. However, they could not escape them.

163. This bait-and-switch unjustly enriched Defendants. Every \$15 co-pay charged to a Retiree is \$15 that Defendants avoid having to pay. Equity and good conscience demand that Defendants not be allowed to profit from this scheme.

164. Second, Defendants are not legally allowed to charge Retirees co-pays. Claims for payment by medical providers are required by the Contract to be fully paid – after deductibles – by Defendants.

165. Under the Funding Rider’s Minimum Premium Plan, Emblem/GHI is supposed to pay the claims from a City-funded account controlled by Emblem/GHI – up to the Monthly Trigger amount. By requiring Retirees to pay the first \$15 of a claim, the City is unjustly enriched by escaping its obligation to pay the entire claim.

166. In addition, Defendants Emblem/GHI have been, and are continuing to be, unjustly enriched. Claims for payment by medical providers are required to be fully paid – after deductibles – by Defendants. Emblem/GHI are supposed to pay medical providers’ claims from a City-funded account up to a Monthly Trigger amount. Thereafter, Emblem/GHI are supposed to pay the claims and are allowed to bill the City an additional premium for doing so. By shifting the first \$15 of each claim to Retirees, Emblem/GHI are avoiding their obligation to pay claims they are responsible for after the Monthly Trigger, thereby unjustly enriching themselves.

167. An unjust enrichment cause of action is appropriate because Defendants failed to make restitution to Retirees for the co-pays Retirees have unjustly incurred. These \$15 payments to medical providers are an expense that should have been borne by Defendants.

168. By imposing a \$15 co-pay on Retirees, Defendants shifted an expense – the first \$15 of the 20% of medical providers’ bills – that they were obligated to pay to Retirees. Rather than pay the full 20% of medical providers’ Medicare-authorized

expenses, Defendants required Retirees to pay the first \$15 of each provider bill, and then failed to make restitution to Retirees.

169. By forcing Retirees to incur expenses that Defendants themselves owe, Defendants have been unjustly enriched by at least \$55 million to date.

THIRD CAUSE OF ACTION

Violation of New York Insurance Law § 4226 With Respect to the Emblem/GHI Defendants On Behalf of the Retiree Plaintiffs, Individually, and the Class

170. The Retiree Plaintiffs incorporate by reference all allegations in this Complaint and restate them as if fully set forth herein.

171. Insurance companies have a statutory obligation to provide accurate and complete information about their healthcare plans. Specifically, N.Y. Insurance Law § 4226 states in pertinent part: “No insurer authorized to do in this state the business of . . . health insurance . . . shall . . . issue or circulate, or cause or permit to be issued or circulated on its behalf, any illustration, circular, statement or memorandum misrepresenting the terms, benefits or advantages of any of its policies or contracts.”

172. Emblem/GHI are liable under Section 4226 because (1) Emblem/GHI are authorized to provide health insurance in New York; (2) they misrepresented that Retirees would not be charged co-pays for the Senior Care plan; (3) the misrepresentations were material; (4) Emblem/GHI knew that they had misrepresented the terms, benefits, and advantages of the Senior Care plan; (5) they knew that the SPDs and other documents containing the misrepresentations would be communicated to the Retirees, directly and indirectly; (6) Retirees received such documents and learned of the misrepresentations, directly and indirectly; (7) Emblem/GHI did not abide by their representations; and (8) Retirees were thereby injured.

173. The Emblem/GHI Defendants issued statements via the 2020 and 2022 SPDs, the Senior Care insurance cards, the COI, and their website that materially misrepresented—through affirmative misstatements as well as omissions—the co-pays that would and could be imposed under Senior Care.

174. These misrepresentations were material, as co-pays are an important feature of a health insurance plan, one which influences Retirees' healthcare enrollment decision.

175. Emblem/GHI knew the co-pays that would be charged under the Senior Care plan. In fact, they disclosed them in a December 2021 version of the SPD that was very briefly posted online.

176. Emblem/GHI knew the SPDs would be furnished to and relied upon by Retirees in making their healthcare enrollment decisions in 2020 and 2022.

177. Retirees have suffered economic and non-economic injuries as a result of Emblem/GHI's misconduct. Among other injuries, they have incurred unlawful co-pays without their consent or prior notice. And these co-pays have forced many to forego medical care, reduce spending on necessities, and suffer severe emotional and psychological distress. In addition, Retirees have been prevented from making informed financial and healthcare decisions.

178. These violations of New York Insurance Law § 4226(a) were knowing and Emblem/GHI knowingly received premiums and other compensation as a result of such violations.

FOURTH CAUSE OF ACTION

Negligent Misrepresentation With Respect to All Defendants On Behalf of the Retiree Plaintiffs, Individually, and the Class

179. The Retiree Plaintiffs incorporate by reference all allegations in this Complaint and restate them as if fully set forth herein.

180. Defendants have a special relationship with Retirees. Defendants are statutorily, contractually, and ethically obligated to provide healthcare to Retirees.

181. Defendants had a duty to accurately describe the Senior Care plan in the SPDs. Defendants publish the SPDs in October to allow Retirees to make an informed healthcare choice during the biennial fall open enrollment period.

182. Retirees enrolled in Senior Care based on Defendants' repeated misrepresentations in the 2020 and 2022 SPDs – the even-numbered years when Retirees were eligible to change their health insurance – that the plan would cover the 20% of healthcare costs not covered by Medicare, and that they (the Retirees) would not be charged a co-pay every time they saw a healthcare provider or received a test, procedure, treatment, or therapy.

183. Retirees reasonably relied on these misrepresentations when making their healthcare enrollment decisions in 2020 and 2022.

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

185. By relying on Defendants' misrepresentations, the Retiree Plaintiffs and the Class have suffered significant monetary and non-monetary injuries. Among other injuries, Defendants' misrepresentations have caused millions of dollars in damages; prevented Retirees from making informed financial and healthcare decisions; forced Retirees to forego medical care and reduce spending on necessities; and caused Retirees to suffer severe emotional and psychological distress.

FIFTH CAUSE OF ACTION

Promissory Estoppel With Respect to All Defendants On Behalf of the Retiree Plaintiffs, Individually, and the Class

186. Plaintiffs incorporate by reference all allegations in this Complaint and restate them as if fully set forth herein.

187. Retirees were induced to enroll in Senior Care based on Defendants' clear and repeated promises in the 2020 and 2022 SPDs, and in the Contract between the City and GHI, that the plan would cover the 20% of healthcare costs not covered by Medicare, and that they (the Retirees) would not be charged a co-pay every time they saw a healthcare provider or received a test, procedure, treatment, or therapy.

188. Retirees reasonably relied on these promises when making their healthcare enrollment decisions.

189. By relying on Defendants' false promises, the Retiree Plaintiffs and the Class have suffered significant monetary and non-monetary injuries. Among other injuries, Defendants' false promises have caused millions of dollars in damages; prevented Retirees from making informed financial and healthcare decisions; forced Retirees to forego medical care and reduce spending on necessities; and caused Retirees to suffer severe emotional and psychological distress.

SIXTH CAUSE OF ACTION

Fraudulent Inducement With Respect to the Emblem/GHI Defendants On Behalf of the Retiree Plaintiffs, Individually, and the Class

190. Plaintiffs incorporate by reference all allegations in this Complaint and restate them as if fully set forth herein.

191. The 2020 and 2022 SPDs misrepresented and omitted material information regarding the Senior Care co-pays.

192. Emblem/GHI knew that the SPDs inaccurately failed to disclose the Senior Care co-pays, and they intended this result in order to induce Retirees to enroll in Senior Care on the false belief that it would not require co-pays.

193. By disclosing the \$15 co-pays for Senior Care in a version of the SPD that was briefly posted online in December 2021, and by disclosing in the 2020 and 2022 SPDs the co-pays applicable to their other healthcare plans, Emblem/GHI demonstrated that their misrepresentations and omissions regarding Senior Care co-pays were knowing and intentional.

194. Emblem/GHI made these knowing and intentional misrepresentations and omissions about co-pays in order to induce Retirees to enroll in Senior Care. By fraudulently inducing Retirees to enroll in Senior Care, Emblem/GHI have profited immensely in an amount to be determined at trial.

195. Retirees justifiably relied on the information provided in the 2020 and 2022 SPDs regarding Senior Care.

196. Emblem/GHI's fraudulent inducement has caused Retiree Plaintiffs and the Class members significant monetary and non-monetary injuries. Among other injuries, it has caused millions of dollars in damages; prevented Retirees from making informed financial and healthcare decisions; forced Retirees to forego medical care and reduce spending on necessities; and caused Retirees to suffer severe emotional and psychological distress.

SEVENTH CAUSE OF ACTION

**Deceptive Acts and Practices in Violation of
General Business Law (“GBL”) § 349
With Respect to All Defendants
On Behalf of the Retiree Plaintiffs, Individually, and the Class**

197. The Retiree Plaintiffs incorporate by reference all allegations in this Complaint and restate them as if fully set forth herein.

198. Defendants have engaged in consumer-oriented conduct that has misled and harmed Retirees.

199. GBL § 349 imposes liability on anyone who engages in deceptive acts and practices in the conduct of any business, trade, or commerce or in the furnishing of any service in New York.

200. The Defendants engaged in deceptive acts and practices by publishing and disseminating informational and marketing materials prior to and during the open enrollment periods in 2020 and 2022 regarding the Senior Care plan—including the SPD, COI, health insurance cards, and Emblem’s website—that omitted and misrepresented the fact that Retirees would be charged a \$15 co-pay every time they saw a healthcare provider or received a test, procedure, treatment, or therapy.

201. The misrepresentation that Senior Care would impose no co-pays was materially misleading.

202. Retirees relied on the misinformation provided by Defendants when attempting to make an informed healthcare enrollment decision in the fall of 2020 and 2022.

203. The Defendants engaged in these deceptive practices in violation of GBL § 349.

204. The acts and practices alleged herein are deceptive acts and practices covered under GBL § 349 and have caused Retiree Plaintiffs and the Class significant monetary and non-monetary injuries. Among other injuries, Defendants' deceptive acts and practices have caused millions of dollars in damages; prevented Retirees from making informed financial and healthcare decisions; forced Retirees to forego medical care and reduce spending on necessities; and caused Retirees to suffer severe emotional and psychological distress.

EIGHTH CAUSE OF ACTION

Deceptive Acts and Practices in Violation of General Business Law ("GBL") § 349 With Respect to All Defendants On Behalf of the Organization

205. Plaintiffs incorporate by reference all allegations in this Complaint and restate them as if fully set forth herein.

206. The Defendants have engaged in consumer-oriented, deceptive acts and practices that have harmed the Organization.

207. The acts and practices alleged herein are deceptive acts and practices covered under GBL § 349 and have caused the Organization monetary and non-monetary injuries. Among other injuries, the Organization (which is comprised of volunteer Retirees) has had to devote substantial time and resources helping scores of Retirees who are anxious and confused about the Senior Care co-pays.

NINTH CAUSE OF ACTION

False Advertising in Violation of General Business Law ("GBL") § 350 With Respect to All Defendants On Behalf of the Retiree Plaintiffs, Individually, and the Class

208. Plaintiffs incorporate by reference all allegations in this Complaint and restate them as if fully set forth herein.

209. GBL § 350 imposes liability on anyone who uses false advertising in the conduct of any business, trade, or commerce or in the furnishing of any service in New York.

210. A cause of action based upon false advertising is appropriate because the Defendants utilized false advertising to mislead Retirees about the nature and coverage of the Senior Care plan.

211. In the 2020 and 2022 SPDs, as well as other places (including Emblem's website), Defendants falsely advertised the Senior Care plan as not requiring co-pays. This was a material misrepresentation, as co-pays are an important feature of a health insurance plan, one which influences Retirees' healthcare enrollment decision.

212. By falsely advertising Senior Care, Defendants misled Retirees about their health insurance options and deprived them of their opportunity to make an informed healthcare enrollment decision.

213. The Defendants falsely advertised the Senior Care plan in violation of GBL § 350.

214. The Defendants' false advertising of the Senior Care plan caused Retiree Plaintiffs and the Class significant monetary and non-monetary injuries. Among other injuries, it has caused millions of dollars in damages; prevented Retirees from making informed financial and healthcare decisions; forced Retirees to forego medical care and reduce spending on necessities; and caused Retirees to suffer severe emotional and psychological distress.

TENTH CAUSE OF ACTION

**False Advertising in Violation of General Business Law (“GBL”) § 350
With Respect to All Defendants
On Behalf of the Organization**

215. Plaintiffs incorporate by reference all allegations in this Complaint and restate them as if fully set forth herein.

216. The Defendants have engaged in consumer-oriented false advertising of the Senior Care plan in violation of GBL § 350.

217. Such misconduct has caused the Organization monetary and non-monetary injuries. Among other injuries, the Organization (which is comprised of volunteer Retirees) has had to devote substantial time and resources helping scores of Retirees who are anxious and confused about the Senior Care co-pays.

ELEVENTH CAUSE OF ACTION

**Violation of CPLR 7803(3)
With Respect to the City Defendants
On Behalf of the Retiree Plaintiffs, Individually, and the Class**

218. CPLR 7803(3) allows individuals to challenge City action that was taken “in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion.”

219. The City’s ongoing imposition of co-pays on Retirees without their prior consent and without advance warning, and its decision to hide the existence of these co-pays in the October 2020 and 2022 SPDs, are arbitrary and capricious and clear abuses of discretion. Moreover, because these co-pays are not permitted under the Contract governing Senior Care, the City’s actions are also “in violation of lawful procedure” and “affected by an error of law.”

220. The City’s misconduct has caused and, if not enjoined, will cause Retiree Plaintiffs and the Class significant monetary and non-monetary injuries. Among other injuries, it has caused millions of dollars in damages; prevented Retirees from making informed financial and healthcare decisions; forced Retirees to forego medical care and reduce spending on necessities; and caused Retirees to suffer severe emotional and psychological distress. These injuries will continue until the City’s misconduct is enjoined.

TWELFTH CAUSE OF ACTION

Collateral Estoppel With Respect to the City Defendants On Behalf of the Retiree Plaintiffs, Individually, and the Class

221. Plaintiffs incorporate by reference all allegations in this Complaint and restate them as if fully set forth herein.

222. A cause of action based upon collateral estoppel is appropriate because this action is directly related to the case of *NYC Organization of Public Service Retirees v. Champion*, Index No. 158815/2021 (“*NYC Organization*”). *NYC Organization* involved the same City Defendants, the same Retirees, the same health insurance plan (Senior Care), and the same statutory right to health insurance (N.Y.C. Administrative Code § 12-126).

223. On March 3, 2022, a Decision and Order was entered in *NYC Organization* by New York County Supreme Court Justice Lyle Frank.¹⁰

224. That Decision and Order stated, in pertinent part: “The [City] is permanently enjoined from passing along **any costs** of the New York City retirees’ current plan [*i.e.*, Senior Care] to the retiree or to any of their dependents, except where

¹⁰ Index No. 158815/2021, NYSCEF Doc. No. 215.

such plan rises above the H.I.P.-H.M.O. threshold, as provided by New York City Administrative Code Section 12-126.” The Court then found that such “threshold is not crossed by the cost of the retirees’ current health insurance plan [*i.e.*, Senior Care].” In other words, the Court prohibited the City from passing along any costs of Senior Care to Retirees. This Order was unanimously affirmed by the Appellate Division, First Department. *See NYC Org. of Pub. Serv. Retirees, Inc. v. Champion*, Case No. 2022-01006, 2022 WL 17096611 (1st Dep’t Nov. 22, 2022).

225. The City Defendants are flagrantly violating this Court’s clear and unequivocal Order by imposing a \$15 co-pay on Retirees every time they see a healthcare provider or receive a test, procedure, treatment, or therapy. These co-pays are unquestionably a “cost” of Senior Care that the City is “passing along” to Retirees.

226. Retirees have, to date, paid more than \$55 million of the costs of the Senior Care plan; costs that should have been paid by the City.

227. The City Defendants refused or willfully neglected to obey the Court’s clear and unequivocal order.

228. The City Defendants are collaterally estopped from arguing that it can pass along the costs of Senior Care through co-pays.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

229. Declaring this action to be a class action properly maintained pursuant to CPLR § 901, appointing the Retiree Plaintiffs as representatives of the Class, and designating Plaintiffs’ counsel as Class Counsel.

230. Granting preliminary and permanent injunctive relief to Plaintiffs and the Class halting the imposition of co-pays on or collection of co-pays from Retirees.

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

232. Awarding statutory damages in addition to actual damages.

233. Awarding treble damages.

234. Awarding punitive damages in the amount deemed appropriate by the Court.

235. Awarding Plaintiffs and the Class pre-judgment and post-judgment interest, as well as costs.

236. Awarding Plaintiffs reasonable attorneys' fees and costs pursuant to CPLR § 909, GBL §§ 349(h) and 350-e, and any other applicable provision of law.

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

DEMAND FOR JURY TRIAL

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

Dated: November 29, 2022

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