

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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**ANA MARTINEZ REYES,
Individually and on behalf of all others
similarly situated,**

Case No. 22-cv-09916

Plaintiff,

-against-

SUMMIT HEALTH MANAGEMENT, LLC,

Defendant.

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SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement”) is made and entered into by the Parties as of June 28, 2023, in the case captioned *Ana Martinez Reyes v. Summit Health Management, LLC*, No. 22-cv-09916, pending in the United States District Court for the Southern District of New York.

1. RECITALS

WHEREAS, on November 21, 2022, Ana Martinez Reyes (the “Named Plaintiff”), brought a proposed class action in the United States District Court for the Southern District of New York (the “Litigation”), alleging that Defendant, Summit Health Management d/b/a CityMD (“Defendant” or “Summit”), circumvented the Family First Coronavirus Response Act (“FFCRA”) and the Coronavirus Aid, Relief, Economic Security Act (the “CARES Act”) by imposing cost-sharing for Covid tests, which the Named Plaintiff claims was prohibited by these laws;

WHEREAS, the Named Plaintiff proposed a class claim alleging that Summit knowingly and willfully violated New York General Business Law §349 and New Jersey Consumer Fraud Statute, N.J. Stat. Ann. §56:8-19 by failing to inform patients that a coinsurance obligation or a co-pay may be imposed by CityMD for their Covid tests;

WHEREAS, Defendant denies each and every one of the allegations of wrongful conduct and damages made by the Named Plaintiff, and Defendant has asserted numerous defenses to Named Plaintiff's claims – including, without limitation, that the FFCRA and CARES Act did not prohibit health care providers such as Defendant from imposing cost sharing for COVID tests and that there was no violation of law, let alone a willful or knowing one – and disclaims any wrongdoing or liability whatsoever. Defendant further denies that this matter satisfies the requirements to be tried as a class action under Federal Rules of Civil Procedure, Rule 23, and that the class members have Article III standing to plead their claims;

WHEREAS, the Parties agree to stipulate to certify the Class, for settlement purposes only, as defined in Section 4.1.1 of this Settlement Agreement;

WHEREAS, this Settlement Agreement has been reached after the Parties engaged in confidential settlement negotiations, including the exchange of documents, and is a product of sustained, arm's length settlement negotiations and formal mediation using a third-party mediator;

WHEREAS, the Named Plaintiff and Defendant recognize that the outcome of this matter is uncertain, and that a final resolution through the litigation process could require several more years of protracted adversarial litigation and appeals; substantial risk and expense; the distraction and diversion of the Defendant's personnel and resources and the Named Plaintiff and Defendant, and their respective counsel, have agreed to resolve this matter as a settlement class action according to the terms of this Settlement Agreement; and

NOW, THEREFORE, without: (1) any admission or concession on the part of the Named Plaintiff of the lack of merit of the Litigation whatsoever, or (2) any admission or concession of liability or wrongdoing or the lack of merit of any defense whatsoever by Defendant, it is hereby stipulated and agreed by the undersigned on behalf of the Named Plaintiff, the Class, and the Defendant that this matter and all claims of the class be settled, compromised, and dismissed on the merits and with prejudice as to Defendant, subject to Court approval as required by Federal Rules of Civil Procedure, Rule 23, on the terms and conditions set forth herein.

The recitals stated above are true and accurate and are made a part of this Settlement Agreement.

2. DEFINITIONS

For the purposes of this Settlement Agreement, including the recitals stated above, the following terms will have the following meanings:

- 2.1** “CAFA Notice” means notice (in a form substantially similar to that attached as Exhibit 4) of this settlement to the appropriate federal and state officials, as provided by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and as further described in Section 4.2.4.
- 2.2** “Claim” and “Claims” mean all claims, counterclaims, demands (including, without limitation, demands for arbitration), actions, suits, causes of action, allegations of wrongdoing, and liabilities.
- 2.3** The “Settlement Class” or the “Class Members” means the class of approximately 138,776 consumers who paid CityMD bills up to and including December 1, 2022, for a Covid test that was conducted at a CityMD facility located in either New York or New Jersey;
- 2.4** “Class Counsel” means Klafter Lesser LLP and Locks Law Firm PLLC.
- 2.5** “Class List” or “List” means the respective list of Class Members, as further described in Section 4.2.1.

- 2.6** “Class Notice” means the notice (in a form substantially similar to those attached as Exhibit 3 and approved by the Court) that will be disseminated to the Class, as further described in Section 4.2.3.
- 2.7** “Class Notice Plan” means the plan for providing notice of this settlement to the Class under Federal Rules of Civil Procedure, Rule 23(c)(2)(A) and (e)(1), as set forth in Section 4.2.
- 2.8** The “Class Released Claims” means those Claims that the Class Members are releasing, as set forth in Section 4.4.
- 2.9** “Court” means the United States District Court for the Southern District of New York.
- 2.10** “Defendant” means Summit Health Management, LLC d/b/a CityMD.
- 2.11** “Effective Date” means the date on which all appellate rights with respect to the Final Order and Judgment have expired or have been exhausted in such a manner as to affirm the Final Order and Judgment, and when no further appeals are possible, including review by the United States Supreme Court.
- 2.12** “Final Judgment” or “Final Order and Judgment” means a final judgment and order of dismissal entered by the Court in this Litigation, in the form of Exhibit 1 hereto, granting final approval of this Settlement Agreement (including Class Counsel’s request for attorneys’ fees, costs, and other expenses and the Named Plaintiff’s request for a Service Award), and entering a judgment according to the terms set forth in this Settlement Agreement.
- 2.13** “Litigation” means *Ana Martinez Reyes v. Summit Health Management LLC* No. 22-cv-09916, pending in the United States District Court for the Southern District of New York.
- 2.14** “Named Plaintiff” means Ana Martinez Reyes.
- 2.15** “Party” and “Parties” mean the Named Plaintiff, the Class, and the Defendant.

- 2.16** “Preliminary Approval” and “Preliminary Approval Order” mean the Court’s order in the form attached hereto as Exhibit 2, preliminarily approving the proposed settlement, approving, directing the Class Notice Plan, and appointing a Settlement Administrator.
- 2.17** “Released Parties” means the Defendant and/or any of its parents, subsidiaries, corporate affiliates, representatives, employees, agents, officers, directors, insurers, or affiliates.
- 2.18** “Service Award” means the one-time payment to the Named Plaintiff, for the time and resources she has put into representing the Class as set forth in Section 5.3.1.
- 2.19** “Settlement Administrator” means, subject to Court approval, American Legal Claim Services LLC.
- 2.20** “Settlement Agreement” means this Settlement Agreement and Release, including its Exhibits.
- 2.21** “Settlement Fund” means the monetary relief which Defendant has agreed to provide for the benefit of the Class, as further described in Section 4.3.1.

3. PRELIMINARY APPROVAL

3.1 Preliminary Approval Order

As soon as reasonably practicable, the Named Plaintiff shall file with the Court a Motion for Preliminary Approval of the Proposed Class Action Settlement, the Class Notice Plan, and Appointment of Settlement Administrator. The Motion shall seek entry of an Order that would, for settlement purposes only:

- a) certify the class as stipulated by the Parties;
- b) preliminarily approve this Settlement Agreement;
- c) approve the proposed the Class Notice Plan, including the form of mailed notice substantially similarly to those attached as Exhibit 3 and maintenance of the Class Website and an IVR call center; and

d) appoint the Settlement Administrator, which will facilitate the notice process by assisting the Parties and providing professional guidance in the implementation of the Class Notice Plan.

3.2 Defendant's Right to Seek to De-Certify Class if Settlement Agreement Not Approved

The Defendant contends that this Litigation, and the respective class alleged therein, does not meet the requirements for class certification under Federal Rules of Civil Procedure, Rule 23 for trial purposes. Nothing in this Settlement Agreement shall be construed as an admission by Defendant that this Litigation or any similar case is amenable to class certification for trial purposes. Furthermore, nothing in this Settlement Agreement shall prevent Defendant from seeking de-certification of the certified Class if final approval of this Settlement Agreement is not obtained, or not upheld on appeal, including review by the United States Supreme Court, for any reason, or if any of the conditions exist that permit Defendant to terminate this Settlement Agreement in accordance with Section 7.

4. THE CLASS

4.1 Certification of the Class

4.1.1 Class Definition

Per stipulation of the Parties, the Class is defined, for settlement purposes only, as:

All persons who paid CityMD bills up to and including December 1, 2022 for a Covid test that was conducted at a CityMD facility located in either New York or New Jersey.

The Class does not include Defendant's officers, directors, and employees; Defendant's attorneys; Named Plaintiff's attorneys; any Judge overseeing or considering the approval of the Settlement together with members of any Judge's immediate family and any judicial staff.

4.2 The Class Notice Plan

4.2.1 Class List of the Settlement Class Members

Within ten (10) business days after entry of the Preliminary Approval Order, Defendant will provide a Class List of the 138,776 Class Members, who CityMD refunded for their co-pay, to the Settlement Administrator, which will include the following information for each Class Member, to the extent that Defendant has the information:

- a) the Class Member's name;
- b) the Class Member's email address;
- c) the Class Member's cell phone number; and
- d) the Class Member's last known postal address.

4.2.2 Court Appointment and Retention of Settlement

Administrator

At the Preliminary Approval hearing, the Parties will propose that the Court appoint the Settlement Administrator, American Legal Claim Services LLC. The Settlement Administrator will facilitate the notice process by assisting the Parties and providing professional guidance in the implementation of the Class Notice Plan.

4.2.3 The Class Notice

The Named Plaintiff, Defendant, and the Settlement Administrator have agreed that they will jointly recommend the Class Notice, substantially in the form attached as Exhibit 3, to the Court for approval. After the provision of the Class List by Defendant to the Settlement Administrator, in accordance with Section 4.2.1, the Settlement Administrator will run the Class List through appropriate email or physical address updating services (including the National Change Of Address ("NCOA") database), and then, begin emailing and mailing within ten (10) business days of receipt of the Class List. Distribution of the Class Notice via email to all those Class Members for whom email addresses could be obtained or, to the extent that email

dissemination of the Class Notice cannot be effected for any Class Member (such as because of lack of an email address), via U.S. mail, shall be completed within twenty (20) business days of receipt of the Class List. The Settlement Administrator shall send the full eight-page Notice in the form attached as Exhibit 3 to those Class Members whose email addresses are available, while a single postcard will be mailed to the remaining Class Members. The postcard will provide all necessary information and will direct Class Members to the Settlement website, where all relevant documents (including the full Settlement Agreement and the full Notice) will be available.

For up to forty-five days following the dissemination of the Class Notice, the Settlement Administrator will either re-email the Class Notice, if possible, or mail via standard U.S. Mail, postage prepaid, to updated email or physical addresses of the Class Members to the extent that the Settlement Administrator received any email or physical address change notifications from the U.S. Postal Service or otherwise. No later than ten (10) business days before the final fairness hearing in this Litigation, the Settlement Administrator will provide proof of the dissemination of the Class Notice to Class Counsel for filing with the Court as part of a motion for final approval. Neither the Parties nor the Settlement Administrator will have any further obligation to send notice of the Settlement to the Class Members.

The Class Notice will explain to the Class Member that he or she has the option of opting out of the Settlement, and that if he or she does not effectively opt out as provided for herein, then he or she can expect to receive the specified compensation from the Settlement Fund after the Effective Date. The Class Notice will further explain to the Class Member how to object to the settlement if he or she chooses to do so. The Class Notice will also provide the Class Member with notice of the Settlement Agreement.

4.2.4 CAFA Notice

The Parties agree that the Defendant shall serve notice of the settlement that meets the requirements of the Class Action Fairness Act, 28 U.S.C. § 1715, on the appropriate federal and state officials (including in the State of New York) not later than ten days after the filing of this Settlement Agreement with the Court. No later than ten days before the Final Approval Hearing, Defendant shall file with the Court a certification of the date upon which the CAFA Notice was served.

4.2.5 Costs

The costs associated with The Class Notice Plan shall be paid using the Settlement Fund, provided however that Defendant will separately pay the cost of the mailing of the settlement checks to Class members up to the amount of \$50,000, the rest of the check mailing costs to come out of the Settlement Fund.

4.3 Settlement Consideration

4.3.1 The Class Monetary Relief

The Class Members shall each receive pro rata distributions from the Settlement Fund in proportion to the amounts of the refunded charges previously paid to Settlement Class members by Summit, provided, however, that a minimum amount of \$5.00 shall be the amount sent to any individual Settlement Class Member and the proportional amounts to be paid to the Settlement Class adjusted accordingly to pay such a minimum amount.

4.4 The Class Release

4.4.1 Release of All Claims

Upon the Effective Date, the Named Plaintiff, and each Class Member who has not followed the process set forth herein in Section 4.4.3 to exclude himself or herself and his or her respective spouses, heirs, executors, administrators, representatives, agents, attorneys, partners,

successors, predecessors, assigns, and all those acting or purporting to act on their behalf acknowledge full satisfaction of, and shall be conclusively deemed to have fully, finally, and forever settled, released, and discharged all claims asserted in the Litigation under New York General Business Law §349 and New Jersey Consumer Fraud Statute, N.J. Stat. Ann. §56:8-19 or claims that could have been asserted in the Litigation related to the matters alleged in the Complaint in the Litigation, and all damages available with respect to such claims, whether known or unknown, matured or unmatured, foreseen or unforeseen, suspected or unsuspected, accrued or unaccrued (the “Released Claims”) which the Named Plaintiff and Class Members who have not properly excluded themselves ever had or now have against the Released Parties.

Subject to the Court’s approval, the Named Plaintiff and Class Members who have not followed the process set forth herein in Section 4.4.5 to exclude themselves shall be bound by this Settlement Agreement and all of their Released Claims shall be dismissed with prejudice and released as against the Released Parties, even if they never received actual notice of the settlement prior to the hearing for final approval of the settlement in this Litigation.

4.4.2 Binding Release

Upon the Effective Date, no default by any person in the performance of any covenant or obligation under this Settlement Agreement or any order entered in connection with such shall affect the dismissal of the Litigation, the *res judicata* effect of the Final Order and Judgment, the foregoing releases, or any other provision of the Final Order and Judgment; provided, however, that all other legal and equitable remedies for violation of a court order or breach of this Settlement Agreement shall remain available to all Parties.

4.4.3 Opt-Out from the Class

4.4.3.1 Requests for Exclusion

All Class Members shall be given the opportunity to opt out of the Class by submitting an

“Opt Out Notice” or a letter containing the information specified in the Class Notice, stating that the Class Member wants to be excluded from the Class. All Opt Out Notices must be in writing, sent to the Settlement Administrator and postmarked no later than thirty (30) days before the Final Approval Hearing. To be valid, a request for exclusion must be personally signed and must include: (1) name, address and telephone number; and (2) a statement substantially to the effect that: “I request to be excluded from the Class in *Ana Martinez Reyes v. Summit Health Management*, No. 22-cv-09916, pending in the United States District Court for the Southern District of New York.” In the event of ambiguity as to whether someone has requested to be excluded, Class Counsel shall contact the Class Member who submitted it to resolve the ambiguity, and, if necessary, present the ambiguity to the Court for resolution.

Notwithstanding the foregoing, no person within the Class, or any person acting on behalf of or in concert or participation with that person, may submit a request for exclusion of any other person within the Class. Requests for Exclusion submitted for more than one Class Member will be invalid as to any other person other than the person who signed the request for exclusion.

4.4.3.2 Verification of Opt-Outs by Settlement Administrator

The Settlement Administrator shall provide copies of the Requests for Exclusion to Class Counsel and counsel for Defendant no later than forty-eight hours after their receipt by the Settlement Administrator. No later than ten (10) business days before the Final Approval Hearing, the Settlement Administrator shall provide Class Counsel with a declaration to be filed with the Court verifying that notice has been provided to the Class as provided by the Class Notice Plan and that all valid Requests for Exclusion have been provided to Class Counsel. No later than ten (10) business days before the Final Approval Hearing and in connection with a motion for final approval, Class Counsel shall file all the Requests for Exclusion for all Class Members who wish to be excluded from the Settlement with the Court.

4.4.3.3 Effect of Opt-Out from the Class

If Final Judgment is granted due to the Settlement Agreement, all excluded class members will, after the Effective Date, preserve their ability to independently pursue, at their own expense, any individual, non-class, non-representative claims he or she claims to have against Defendant. In the event that Final Judgment is not granted and no Effective Date occurs, the Excluded Class Member will return to his or her status as a Class Member as if he or she had never been an Excluded Class Member.

No person who has provided a proper request for exclusion and wishes to be excluded from the Settlement may object to any part of this Settlement Agreement.

4.4.3.4 Objections from Class Members

Any Class Member who has not previously opted-out in accordance with the terms above and who intends to object to this Settlement Agreement must file their objection in writing with the Court no later than sixty (60) days after mailing of the Class Notice, and must concurrently serve the objection on all counsel in this action and the Settlement Administrator. The objection must include the following: (1) the Class Member's full name, address and current telephone number; (2) if the individual is represented by counsel, the name and telephone number of their counsel; (3) all objections and the basis for any such objections stated with specificity; (4) the identity of any witnesses the objector may call to testify; (5) a listing of all exhibits the objector intends to introduce into evidence at the Final Approval Hearing as well as true and correct copies of such exhibits; and (6) a statement of whether the objector intends to appear at the Final Approval Hearing, either with or without counsel.

Any Excluded Class Member or Class Member who fails to timely file and serve a written objection pursuant to this Paragraph shall not be permitted to object to the approval of the Settlement or this Settlement Agreement and shall be foreclosed from seeking any review of the

Settlement or the terms of the Settlement Agreement by appeal or other means.

5. SETTLEMENT FUND

5.1 Settlement Fund

Within seven (7) days after the Effective Date, Defendant shall wire the Settlement Fund to the Settlement Administrator the amount of One Million and Eight Hundred Thousand Dollars (\$1.8 million, the “Settlement Fund”), and which shall constitute the total monetary consideration to the Class Members. From the Settlement Fund shall be paid: (1) the fees and costs of dissemination of the Class Notice and the Notice Plan by the Settlement Administrator; (2) the payment of any award of attorneys’ fees to, and reimbursement of costs and expenses of, Class Counsel, as addressed in Section 5.2, below; (3) the payment of any award of a Service Award to the named Plaintiff, as addressed in Section 5.1.1, below, and (5), after subtracting (1), (2), and (3) (the “Net Settlement Amount”), the direct payment to members of the Settlement Class of their shares of the Net Settlement Amount, to be determined as provided for in Section 4.3.1, above.

5.2 Attorneys’ Fees, Costs, and Other Expenses

No later than ten (10) business days before the Final Approval Hearing, and as part of a motion for final approval, Class Counsel shall make an application to the Court for an award of attorneys’ fees not to exceed \$600,000 in total and for an award of costs and expenses not to exceed \$8,000.

Defendant agrees not to object to the application by Class Counsel for attorneys’ fees in an amount not to exceed \$600,000 and of costs and expenses not to exceed \$8,000.

To the extent the Court approves an award of attorneys’ fees or costs and expenses in amounts less than the requested amounts, then the amount not approved shall become part of the amount of the Net Settlement Fund from which Class Members shall be paid.

The Settlement Administrator shall remit payment to Klafter Lesser LLP for deposit in the firm's escrow for distribution to that firm and Locks Law Firm PLLC of the Court-approved attorneys' fees, costs, and expenses no later than five (5) days after: (1) the Effective Date; and (2) receipt of all Class Counsel's completed W-9 forms, whichever is later.

The application for attorneys' fees, costs, and expenses, and any and all matters related thereto, shall not be considered part of the Settlement Agreement, and shall be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement Agreement. The Named Plaintiff and Class Counsel agree that this Settlement Agreement is not conditional on the Court's approval of attorneys' fees, costs, and expenses in the requested amounts or in any amount whatsoever. If a lesser amount is awarded than requested, the Court's ruling shall not operate to terminate or cancel the Settlement Agreement.

5.2.1 Service Award Paid from Settlement Fund

No later than ten (10) business days prior to the Final Approval Hearing, and as part of a motion for final approval, Class Counsel shall make an application to the Court for the Court's approval of a Service Award to the Named Plaintiff of \$9,000. Defendant agrees not to object to a Service Award of up to \$9,000 for the Named Plaintiff. This Service Award shall be made separately from any attorneys' fees, costs and expenses.

To the extent the Court approves a Service Award in an amount less than the requested amount, the amount not approved shall become part of the amount of the Net Settlement Fund from which Class Members shall be paid. The Settlement Administrator shall pay to the Named Plaintiff the amount of the Court-approved Service Award no later than five (5) days after: (1) the Effective Date; and (2) receipt of the Named Plaintiff's completed W-9 form, whichever is later.

If a lesser Service Award is awarded than requested by the Named Plaintiff, the Court's ruling shall not operate to terminate or cancel the Settlement Agreement.

5.2.2 Payment Schedule

Within fifteen (15) days after the Effective Date, the Settlement Administrator shall (a) send by an electronic payment service payments out of the Settlement Fund to those Class Members who, pursuant to the Settlement website or otherwise by contacting the Settlement Administrator provide details of their electronic payment preference or, (b) in the event of any Class Members who did not provide an electronic payment preference, send via U.S. mail to the last known address reflected in the Class List or the updated address previously discovered during the Class Notice process set forth in Section 4.2.3. As to checks, the payment notices accompanying the payment check shall notify the recipients that the checks must be cashed within sixty (60) days from the date on the payment notice and that the enclosed check shall not be valid after that date. As to the value of (a) any checks not cashed within 60 days of delivery (or any checks that were undeliverable), and if no further update of addresses can be addressed by a Level 1 trace by the Claims Administrator, and (b) any rejected electronic payment service payments that cannot be rectified by the Settlement Administrator by resubmitting the payment, any remaining amounts will be paid to Summit Medical Group Foundation, Inc. d/b/a Summit Health Cares as a *cy pres* entity.

The Settlement Administrator shall provide an accounting of the Settlement Fund one hundred and fifty (150) days after the Effective Date, which will include an accounting of all administrative expenses and costs (including notice costs).

6. ENTRY OF FINAL JUDGMENT AND ORDER

No later than ten (10) days prior to the Final Approval Hearing, Plaintiff shall file a motion, to which Defendant will agree, for entry by the Court of a Final Order and Judgment that includes the following provisions:

- a) granting final approval of this Settlement Agreement, and directing its implementation pursuant to its terms and conditions;
- b) ruling on Class Counsel's application for attorneys' fees, costs, and other expenses;
- c) ruling on the Name Plaintiff's application for a Service Award;
- d) discharging and releasing the Released Parties, and each of them, from the Class Released Claims, as provided in Section 4.4;
- e) permanently barring and enjoining all Class Members, other than excluded class members, from instituting, maintaining, or prosecuting, either directly or indirectly, any lawsuit that asserts Class Released Claims;
- f) directing that the Litigation be dismissed with prejudice and without costs, except as provided herein;
- g) stating pursuant to Federal Rules of Civil Procedure, Rule 54(b) that there is no just reason for delay and directing that the Final Order and Judgment is a final, appealable order; and
- h) reserving to the Court continuing and exclusive jurisdiction over the Parties with respect to the Settlement Agreement and the Final Judgment and Order as provided in Section 8.4.

7. TERMINATION

Defendant's willingness to settle this Litigation on a class-action basis is dependent upon achieving finality in this Litigation and the desire to avoid the expense of this and other litigation. Consequently, Defendant has the right, but not the obligation, to terminate this Settlement Agreement, declare it null and void, and have no further obligations under this Settlement

Agreement to the Named Plaintiff or to members of the Class if any of the following conditions subsequent occurs:

- a) the Parties fail to obtain and maintain preliminary approval of the proposed settlement of the Class Claims;
- b) the Court requires a notice program in addition to or in any form materially other than as specifically set forth in Sections 4.2.3, 4.2.4, and attached Exhibit 3;
- c) any court orders the Defendant to pay, in the aggregate, inclusive of the Settlement Fund and inclusive of the mailing costs set forth in paragraph 4.2.5, in excess of One Million Eight Hundred Fifty Thousand Dollars (\$1,850,000.00);
- d) the Court fails to enter a Final Order and Judgment consistent with the provisions in Section 6;
- e) the settlement of the Class Claims is not upheld on appeal, including review by the United States Court of Appeals for the Second Circuit or the United States Supreme Court; or
- f) the Effective Date does not occur for any reason, including but not limited to the entry of an order by any court that would require either material modification or termination of the Settlement Agreement.

The failure of the Court or any appellate court to approve in full the request by Class Counsel for attorneys' fees, costs, and other expenses shall not be grounds for the Named Plaintiff, the Class, or Class Counsel to cancel or terminate this Settlement Agreement. The failure of the Court or any appellate court to approve in full the request of the Named Plaintiff for her Service Award shall not be grounds for the Named Plaintiff, the Class, or Class Counsel to cancel or terminate this Settlement Agreement.

If the Settlement Agreement is not finally approved, is not upheld on appeal, or is otherwise terminated for any reason before the Effective Date, then the Settlement Agreement and all

negotiations, proceedings, and documents prepared, and statements made in connection therewith, shall be without prejudice to any Party and shall not be deemed or construed to be an admission or confession by any Party of any fact, matter, or proposition of law; and all Parties shall stand in the same procedural position as if the Settlement Agreement had not been negotiated, made, or filed with the Court, with Defendant still in a position to answer the Complaint and assert any defenses.

8. MISCELLANEOUS PROVISIONS

8.1 Best Efforts to Obtain Court Approval

The Named Plaintiff and Defendant, and the Parties' counsel, agree to use their best efforts to obtain Court approval of this Settlement Agreement, subject, however, to Defendant's rights to terminate the Settlement Agreement, as provided in Section 7 herein.

8.2 No Admission

This Settlement Agreement, whether or not it shall become final, and any and all negotiations, communications, and discussions associated with it, shall not be:

a) offered or received by or against any Party as evidence of, or be construed as or deemed to be evidence of, any presumption, concession, or admission by a Party of the truth of any fact alleged by the Named Plaintiff or defense asserted by Defendant, of the validity of any Claim that has been or could have been asserted in the Litigation, or the deficiency of any defense that has been or could have been asserted in the Litigation, or of any liability, negligence, fault, or wrongdoing on the part of the Named Plaintiff or Defendant;

b) offered or received by or against the Named Plaintiff or Defendant as a presumption, concession, admission, or evidence of any violation of the New York GBL or New Jersey CFA or any state or federal statute, law, rule, or regulation or of any liability or wrongdoing by Defendant, or of the truth of any of the Claims, and evidence thereof shall not be

directly or indirectly, in any way, (whether in the Litigation or in any other action or proceeding), except for purposes of enforcing this Settlement Agreement and the Final Order and Judgment including, without limitation, asserting as a defense the release and waivers provided herein;

c) offered or received by or against the Named Plaintiff or Defendant as evidence of a presumption, concession, or admission with respect to a decision by any court regarding the certification of a class, or for purposes of proving any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason as against Defendant, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Settlement Agreement; provided, however, that if this Settlement Agreement is approved by the Court, then the Named Plaintiff or Defendant may refer to it to enforce their rights hereunder; or

d) construed as an admission or concession by the Named Plaintiff, the Class, or Defendant that the consideration to be given hereunder represents the relief that could or would have been obtained through trial in the Litigation.

8.3 Court's Jurisdiction

The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement. The Court also shall retain exclusive jurisdiction (a) over any subsequent claim against Defendant subject to the dispute process described in Section 8.3 and (b) over any determination of whether a subsequent suit is released by the Settlement Agreement. Any such subsequent suit against Defendant necessarily raises the threshold issue of whether the plaintiff in such suit is a member of the Class in this Litigation such that his or her subsequent suit is prohibited under the terms of this Settlement Agreement.

8.4 Settlement Notices

Except for the Class Notice Plan, as provided for in Sections 4.2.3 and 4.2.4 above, all other notices or formal communications under this Settlement Agreement shall be in writing and shall be given (i) by hand delivery; (ii) by registered or certified mail, return receipt requested, postage pre-paid; or (iii) by overnight courier to counsel for the Party to whom notice is directed at the following addresses:

For the Named Plaintiff and the Class:

Seth R. Lesser
Jeffrey A. Klafter
Klafter Lesser LLP
Two International Drive - Suite 350
Rye Brook, NY 10573
Telephone: (914) 934-9200

Janet Walsh
Francesca Iacovangelo
LOCKS LAW FIRM PLLC
622 Third Avenue, 7th Floor
New York, NY 10017
(212) 838-3333

For Defendant:

Andrew B. Kratenstein
Kierstin S. Fowler
MCDERMOTT WILL & EMERY LLP
One Vanderbilt Avenue
New York, New York 10017-3852
(212) 547-5400

Laura McLane
MCDERMOTT WILL & EMERY LLP
200 Clarendon Street, Floor 58
Boston, MA 02116-5021
(617) 535 4410

Counsel may designate a change of the person to receive notice or a change of address, from time to time, by giving notice to all Parties in the manner described in this Section.

8.5 Parties' Costs

Except as otherwise provided for herein, the Named Plaintiff and the Defendant shall be solely responsible for her or its own costs and expenses.

8.6 Taxes

Named Plaintiff and Class Counsel shall be responsible for paying any and all federal, state, and local taxes due on any payments made to them pursuant to the Settlement Agreement.

8.7 Communication with Customers, Business Contacts, and Members of the Public

Defendant reserves the right to communicate with its customers, business contacts, and members of the public in the ordinary course of business. The Parties further agree to cooperate with each other and the Settlement Administrator in connection with any communications to respective Class members or others, as may be necessary to effectuate the terms of this Settlement Agreement.

8.8 Complete Agreement

This Settlement Agreement is the entire, complete agreement of each and every term agreed to by and among the Named Plaintiff, the Class, and their counsel. In entering into this Settlement Agreement, no Party has made or relied on any warranty or representation not specifically set forth herein. This Settlement Agreement shall not be modified except by a writing executed by all the Parties.

8.9 Headings for Convenience Only

The headings in this Settlement Agreement are for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement.

8.10 Severability

In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, this Agreement shall continue in full force and effect without said provision to the extent Defendant does not exercise its right to terminate under Section 7.

8.11 No Party Is the Drafter

None of the Parties to this Settlement Agreement shall be considered to be the primary drafter of this Settlement Agreement or any provision hereof for the purpose of any rule of interpretation or construction that might cause any provision to be construed against the drafter.

8.12 Binding Effect

This Settlement Agreement shall be binding according to its terms upon, and inure to the benefit of, the Named Plaintiff, the Class, the Defendant, the Released Parties, and their respective successors and assigns.

8.13 Authorization to Enter Settlement Agreement

The individual signing this Settlement Agreement on behalf of the Defendant represents that s/he is fully authorized by the Defendant to enter into, and to execute, this Settlement Agreement on its behalf. Class Counsel represent that they are fully authorized to conduct settlement negotiations with counsel for Defendant on behalf of the Named Plaintiff, and to enter into, and to execute, this Settlement Agreement on behalf of the Class, subject to Court approval pursuant to Federal Rules of Civil Procedure, Rule 23(e). The Named Plaintiff enters into and executes this Settlement Agreement on behalf of herself, and as a representative of and on behalf of the Class, subject to Court approval pursuant to Federal Rules of Civil Procedure, Rule 23(e).

8.14 Execution in Counterparts

The Named Plaintiff, Class Counsel, Defendant, and Defendant's counsel may execute this Settlement Agreement in counterparts, and the execution of counterparts shall have the same effect

as if all Parties had signed the same instrument. Facsimile and scanned signatures shall be considered as valid signatures as of the date signed, although the original signature pages shall thereafter be appended to the Settlement Agreement. This Settlement Agreement shall not be deemed executed until signed by the Named Plaintiff, by all Class Counsel, and by counsel for and representatives of Defendant.

[SIGNATURES ON FOLLOWING PAGES]

Named Plaintiff:


Ana Martinez (Jun 28, 2023 13:39 PDT)

Ana Martinez Reyes

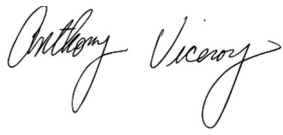
Counsel for Named Plaintiff and the Class:



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Defendant:



Summit Health Management, LLC

Name: ANTHONY VICERY

Title: COO

Counsel for Defendant

s/Andrew B. Kratenstein

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