

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. CPHL, a for-profit corporation organized under the laws of the State of New York, administers a Managed Long Term Care Plan (the “CPHL MLTCP”) pursuant to a Managed Long Term Care Partial Capitation Model Contract (the “MLTCP Contract”) with the New York State Department of Health under which it arranges for health and community-based long-term care services for beneficiaries of the State’s Medical Assistance Program (Medicaid) who enroll in the plan, and reimburses providers for such services.

B. On October 20, 2014, Relator filed a complaint under the *qui tam* provisions of the federal False Claims Act, 31 U.S.C. §§ 3730 (b) – (h) and the New York False Claims Act, N.Y. State Fin. Law § 190(2), captioned United States of America ex rel. Heema Shievdalay v. Centers Plan for Healthy Living LLC, in the United States District Court for the Eastern District of New York (Civil Action No. 14-CV-6129) (the “Shievdalay Action”).

C. CPHL submitted or caused to be submitted to the State’s Medicaid Program and Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1, claims for payment of a monthly capitation amount with respect to members enrolled in the CPHL MLTCP (“Capitation Payment”) during the period from April 1, 2013 through December 31, 2015 (the “Claims Period”).

D. These claims for payment were relied upon by fiscal agents or contractors of the State to pay CPHL the monthly capitation payment for each member enrolled in the CPHL MLTCP on dates occurring during the Claims Period.

E. The United States and the State contend that they have certain civil claims against CPHL under the Federal False Claims Act, 31 U.S.C. §§ 3729-33, *et seq.*, the New York False Claims Act, N.Y. State Fin. Law §§ 189 *et seq.*, other New York statutes and the common law, as

a result of CPHL engaging in the following conduct during the Claims Period (the “Covered Conduct”):

- (1) After April 2013, CPHL knowingly submitted or caused to be submitted false claims for Capitation Payments for the CPHL MLTCP members identified on Exhibit A to this Agreement who received only Social Adult Day Care (“SADC”) and/or transportation services during their enrollment in the CPHL MLTCP, and therefore were not eligible for the CPHL MLTCP under the terms of the MLTCP Contract and Medicaid program laws, rules and regulations.
- (2) After July 2013, CPHL knowingly submitted or caused to be submitted false claims for Capitation Payments for a subset of the CPHL MLTCP members identified on Exhibit B to this Agreement who, for at least some period of their enrollment in the CPHL MLTCP, did not receive qualifying community-based long-term care services under the terms of the MLTCP Contract and Medicaid program laws, rules and regulations, and therefore were not eligible for the CPHL MLTCP.¹

F. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of claims relating to the Covered Conduct, and in consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

III. TERMS AND CONDITIONS

1. CPHL shall pay to the United States and the State a total settlement amount of One Million Six Hundred Fifty Thousand Dollars (\$1,650,000.00) (referred to herein as the “Total Medicaid Settlement Amount”). In accordance with Section 162(f) of the Internal Revenue Code, \$ 720,096.84 of the Settlement Amount paid pursuant to this Agreement is restitution for damages to federal health care programs caused by CPHL as a result of the Covered Conduct.

¹ The names and any other identifying information of the CPHL MLTCP Members identified in Exhibits A and B are redacted in the version of the Agreement that is filed on the Civil Docket to preserve the confidentiality of their identities pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

2. From this amount, CPHL shall pay to the United States the sum of Six Hundred Sixty Thousand Dollars (\$660,000.00) (the “United States Settlement Amount”) and to the State the sum of Nine Hundred Ninety Thousand Dollars (\$990,000.00) (the “State Settlement Amount”).

3. The United States Settlement Amount shall be paid as follows:

- a. No later than ten (10) business days after the Effective Date of this Agreement, CPHL shall wire the sum of Six Hundred Sixty Thousand Dollars (\$660,000.00) to the United States by electronic funds transfer, pursuant to instructions provided by the Office of the United States Attorney for the Eastern District of New York (the “Federal Payment”).
- b. In the event that CPHL fails to pay the amount provided in Paragraph 3.a within fifteen (15) business days of the date on which such payment is due, CPHL shall be in default of its payment obligations (“Default”). The United States will provide written notice of the Default to CPHL, with a copy to the undersigned attorney for CPHL, and CPHL shall have the opportunity to cure such Default within five (5) business days from the date of receipt of the notice. Notice of Default will be delivered to CPHL, or to such other representative, as they shall designate in advance in writing. If CPHL fails to cure such Default within five (5) business days of receiving the Notice of Default (“Uncured Default”), interest on the unpaid United States Settlement Amount shall accrue at the rate of 12% per annum compounded daily from the date of Default on the unpaid amount (principal and interest balance). Upon an Uncured Default, the United States, at its sole option, may: (i) offset the unpaid balance from any amounts

due and owing to CPHL by any department, agency, or agent of the United States at the time of Default; (ii) file a civil action for the Covered Conduct; (iii) exercise any other rights granted by law or in equity, including referral of this matter for private collection; or (iv) exclude CPHL from participating in all Federal health care programs pursuant to Paragraph 9, below, until CPHL pays the United States Settlement Amount and State Settlement Amount, applicable interest, and reasonable costs as set forth in this Agreement. In the event a complaint is filed pursuant to subsection (ii) of this paragraph, CPHL agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, res judicata, or similar theories to the allegations in the complaint, except to the extent such defenses were available to CPHL on October 20, 2014. CPHL agrees not to contest any consent judgment, offset, recoupment, and/or collection action undertaken by the United States pursuant to this paragraph, either administratively or in any state or federal court, except that CPHL shall not be precluded from asserting the affirmative defense of payment or miscomputation. CPHL shall pay to the United States all reasonable costs of collection and enforcement under this paragraph, including attorneys' fees and expenses.

4. The State Settlement Amount shall be paid as follows: No later than ten (10) business days after the Effective Date of this Agreement, CPHL shall wire the sum of Nine Hundred Ninety Thousand Dollars (\$990,000.00) (the "State Payment") to MFCU by electronic funds transfer, pursuant to instructions provided by MFCU.

5. In the event that CPHL fails to pay any or all of the State Settlement Amount when due, as set forth in Paragraph 4, above, the State will provide written notice of the default to be sent by first-class mail to the undersigned attorney for CPHL. In the event of default, the State Settlement Amount shall be immediately due and payable, and interest shall accrue at the rate of 9% per annum compounded daily on the remaining unpaid principal balance, beginning seven (7) business days after the notice of default is sent. If the State Settlement Amount, with all accrued interest, is not paid in full within seven (7) business days after the notice of default is sent, the State, at its option, may:

- a. Rescind this Agreement and reinstate the Complaint;
- b. Seek specific performance of the Agreement; or
- c. Exercise any other rights granted by law, or under the terms of this Agreement, or recognizable at common law or in equity.

6. In the event that the State seeks remedies for collection or enforcement of CPHL's obligations hereunder, and the State substantially prevails in its collection or enforcement action, CPHL shall be responsible for all reasonable costs and expenses incurred by the State in connection with that action.

7. In the event the State opts to rescind this Agreement pursuant to Paragraph 5.a, CPHL expressly agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that relate to the Covered Conduct, except to the extent such defense was available on October 20, 2014.

8. In the event the United States and/or the State reinstate an action concerning, or in the event of any criminal prosecution or administrative action relating to, the Covered Conduct,

CPHL further waives and will not assert any defenses they may have to any action relating to the Covered Conduct to the extent that such defenses may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the United States Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the United States Constitution, this Agreement bars a remedy sought in such action.

9. Notwithstanding the foregoing, in the event of Uncured Default as defined in Paragraph 3, above, OIG-HHS may exclude CPHL from participating in all Federal health care programs until CPHL pays the remaining United States Settlement Amount and reasonable costs as set forth in Paragraph 3, above. OIG-HHS will provide written notice of any such exclusion to CPHL. CPHL waives any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7), and agrees not to contest such exclusion either administratively or in any state or federal court. Reinstatement to program participation is not automatic. If at the end of the period of exclusion CPHL wishes to apply for reinstatement, CPHL must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. CPHL will not be reinstated unless and until OIG-HHS approves such request for reinstatement.

RELEASES

10. Subject to the exceptions in Paragraph 11 below (concerning excluded claims), and conditioned upon CPHL's full payment of the Total Medicaid Settlement Amount, the United States releases CPHL from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; any statutory provision creating a cause of action for civil damages or civil penalties for which the Civil Division of the Department of Justice has actual and present authority to assert

and compromise pursuant to 28 C.F.R. Part O, Subpart I. 0.45(d), or the common law theories of payment by mistake, unjust enrichment, and fraud.

11. Notwithstanding the releases given in Paragraph 10 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability of individuals;
- f. Any liability based upon obligations created by this Agreement;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due; and
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

12. Subject to the exceptions in Paragraph 13 below (concerning excluded claims), in consideration of the obligations of CPHL set forth in this Agreement, conditioned upon payment in full by CPHL of the Total Medicaid Settlement Amount, and subject to Paragraph 28 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the State agrees to release CPHL from any civil monetary claim for the Covered Conduct that the State has or may have against CPHL

under the New York False Claims Act, N.Y. State Fin. Law §§ 189 *et seq.*, Executive Law § 63(12), Social Services Law § 145-b, or any other state law, or common law or equity, including equitable theories of payment by mistake, disgorgement, unjust enrichment, breach of contract, and fraud.

13. Notwithstanding any term of this Agreement, including the releases provided in Paragraph 12, above, but subject to Paragraph 14 below, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person are the following claims of the State:

- a. Any civil, criminal or administrative liability arising under New York Tax Law;
- b. Any civil liability that CPHL has or may have under any state statute, regulation or rule not covered by this Agreement;
- c. Any criminal liability;
- d. Any administrative liability, including mandatory or permissive exclusion from the Medicaid program;
- e. Any liability to the State (or its agencies) for any conduct other than the Covered Conduct;
- f. Any liability of individuals;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due;
- i. Any liability for personal or property damage or for other consequential damages arising from the Covered Conduct;

- j. Any patient abuse or neglect; and
- k. Any liability based on obligations created by this Agreement.

14. In consideration of the obligations of CPHL set forth in this Agreement, and subject to the exceptions in Paragraph 13, above, conditioned upon payment in full by CPHL of the Total Medicaid Settlement Amount, the State agrees that the Total Medicaid Settlement Amount shall constitute full repayment of any overpayments resulting from the Covered Conduct owed or alleged to be owed, including any overpayments resulting from the Covered Conduct which were the subject of a New York State agency investigation.

15. In consideration of the obligations of CPHL set forth in this Agreement, conditioned upon payment in full by CPHL of the Total Medicaid Settlement Amount, Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, agrees to release CPHL from any civil monetary claim the Relator has or may have for herself for the Covered Conduct against CPHL or on behalf of the United States or the State under the federal False Claims Act, 31 U.S.C. §§ 3729-3733, or the New York False Claims Act, N.Y. State Fin Law §§ 189 *et seq.*

16. CPHL fully and finally releases the United States, the State, and their agencies, current and former employees, officers, servants and agents from any claims (including attorneys' fees, costs and expenses of every kind and however denominated) that CPHL has asserted, could have asserted, or may assert in the future against the United States, the State, or their agencies, current and former employees, officers servants, and agents related to the matters arising from the Covered Conduct, the State's and the United States' investigation of the Covered Conduct, the Shievdalay Action, and any prosecution thereof by the United States and the State, and this Agreement.

17. In consideration of the obligations of Relator set forth in this Agreement, CPHL, on behalf of itself, and its officers, agents and employees fully and finally releases Relator and her respective heirs, successors, attorneys, agents, and assigns from any claims that CPHL has asserted, could have asserted, or may assert in the future against Relator and her heirs, successors, attorneys, agents and assigns related to the Covered Conduct, the Shievdalay Action and Relator's investigation and prosecution thereof.

18. Relator and her heirs, successors, attorneys, agents and assigns shall not object to this Agreement and agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B) and N.Y. State Fin. Law §190(5)(b)(ii) and, Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, fully and finally releases, waives, and forever discharges the United States and the State, their officers, agents, and employees, from any claims arising from or relating to 31 U.S.C. §§ 3729-33, *et seq.* and N.Y. State Fin. Law §190, from any claims arising from the filing of the Civil Action, from any other claims for a share of the Total Medicaid Settlement Amount, and in full settlement of any claims Relator may have against the United States and the State under this Agreement. This Agreement does not resolve nor in any manner affect any claims that the United States or the State has or may have against Relator arising under the United States' tax laws, State's tax laws, or any claims arising under this Agreement.

19. Payments by the United States and the State to the Relator, as provided for by § 3730(d)(1) and N.Y. State Fin. Law §190(6)(a), are not included in this Agreement, and will be the subject of a separate agreement. The United States and the Relator have agreed on a Relator's share of the United States Settlement Amount of 16%; the State and the Relator have agreed on a Relator's share of the State Settlement Amount of 16%. Payments made to the Relator pursuant

to § 3730(d)(1) and N.Y. State Fin. Law §190(6)(a) are contingent upon the United States and the State receiving the Settlement Amount payments set forth in Paragraph 3 and 4 above. It is expressly understood and agreed that the United States and the State in no way promise, guarantee, nor are liable to Relator for the collection or payment of any funds pursuant to this Agreement or the payment of Relator's share except as provided herein for funds actually collected and received by the United States and the State. Under no circumstances shall the State or the United States be required to exercise any authority under this Agreement or any other power or authority for the benefit of Relator. Contingent upon actual receipt of payments, including accrued interest, if any, as set forth in Paragraphs 3 and 4, the United States and the State shall promptly inform Relator's counsel of such payment's receipt, and pay to Relator any agreed-upon Relator's share as soon as feasible after receipt, in accordance with payment instructions to be provided in writing by Relator's counsel.

20. CPHL and Relator have resolved Relator's claim for entitlement under N.Y. State Fin. Law § 190(6)(a) and 31 U.S.C. § 3730(d) to an amount for reasonable expenses, attorneys' fees and costs. CPHL, Relator and Relator's counsel have agreed that the reasonable expenses, attorneys' fees and costs in this matter are Fifty-Five Thousand Dollars (\$55,000.00). No later than twenty (20) business days after the Effective Date of the Agreement, CPHL shall pay to Relator's counsel The Law Offices of Daniel Felber \$55,000.00 to its office located at 100 Park Avenue, Suite 1600, New York, New York 10017. Relator's counsel shall provide CPHL with an executed IRS Form W-9.

OTHER PROVISIONS

21. The Total Medicaid Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by Medicaid, or any state payor,

related to the Covered Conduct; and CPHL agrees not to resubmit to Medicaid, or any state payor any previously denied claims related to the Covered Conduct, and agree not to appeal any such denial of claims.

22. CPHL agrees that they waive and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct. CPHL agrees to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of CPHL or his present or former officers, directors, employees, shareholders, and agents in connection with:

- i. the matters covered by this Agreement;
- ii. the United States' audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
- iii. CPHL's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- iv. the negotiation and performance of this Agreement; and
- v. the payment CPHL makes to the United States pursuant to this Agreement and any payments that CPHL makes to Relator, including costs and attorneys' fees, are unallowable costs for government contracting purposes

and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (“FEHBP”) (hereinafter referred to as “Unallowable Costs”).

b. Future Treatment of Unallowable Costs: If applicable, Unallowable Costs shall be separately determined and accounted for by CPHL, and CPHL shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by CPHL or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: If applicable, CPHL further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by CPHL or any of its subsidiaries or affiliates and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. CPHL agrees that the United States, at a minimum, shall be entitled to recoup from CPHL any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

d. Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by CPHL or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on CPHL or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

e. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine CPHL's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

23. CPHL agrees that all costs, including legal fees, incurred by or on behalf of itself and any associated person or entity in connection with (1) the State's and the United States' investigation of the Covered Conduct; (2) CPHL's investigation and defense of this matter (including attorneys' fees and expenses); (3) the negotiation and performance of this Agreement; and (4) the payment pursuant to this Agreement are unallowable costs on government contracts and under the Medicaid Program.

24. CPHL will not charge such unallowable costs directly or indirectly to the Medicaid Program, or seek payment for such unallowable costs through any cost report, cost statement, information statement, or payment request submitted by any Medicaid Provider to the Medicaid Program. CPHL further agrees that within ninety days of the entry of this Agreement, it will identify to Medicaid fiscal agents any unallowable costs included in payments previously sought from the New York State Medicaid Program, including, but not limited to, payments sought in any cost reports, cost statement, information reports, or payment requests already submitted by CPHL, and will request, and agree, that such cost reports, cost statements, information reports, or payment

requests, even if already settled, be adjusted to account for the effect of the inclusion of those unallowable costs. CPHL agrees that the State, at a minimum, will be entitled to recoup from CPHL any overpayment plus applicable interest and penalties as a result of the inclusion of such unallowable costs on previously-submitted cost reports, cost statements, information reports, or payment requests.

25. This Agreement is intended to be for the benefit of the Parties to this Agreement only, and by this instrument the Parties to this Agreement do not release any claims against any other person or entity, except as expressly provided by this Agreement.

26. CPHL shall maintain custody of, or make arrangements to have maintained, all documents and records related to the Covered Conduct for a period of six years after completion of the payment of the Total Medicaid Settlement Amount or the period required by 18 N.Y.C.R.R. § 504.3 and any applicable provider manual, whichever is later.

27. CPHL expressly warrants that it has reviewed its financial situation and that it is currently solvent within the meaning of 11 U.S.C §§ 547(b)(3), and that it currently believes it will remain solvent following its payment to the United States and to the State of New York of the Total Medicaid Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to CPHL, within the meaning of 11 U.S.C. § 547(c) (1), and (b) have concluded that these mutual promises, covenants, and obligations do, in fact, constitute such contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to

hinder, delay, or defraud any entity to which CPHL was or became indebted to on after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a) (1).

28. If within ninety-one days of the Effective Date of this Agreement or of any payment made under this Agreement, CPHL commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of CPHL's debts, or seeking to adjudicate CPHL as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for CPHL or for all or any substantial part of CPHL's assets, CPHL agrees as follows:

- a. CPHL shall provide the MFCU Special Deputy Attorney General immediate notice by hand delivery, express courier followed by postage-prepaid mail at the address contained in paragraph 45 herein.
- b. CPHL's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and CPHL shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) CPHL's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) CPHL was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payments made to the United States or the State; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to CPHL.
- c. If any of CPHL's obligations hereunder are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the State, at its sole option, may rescind the releases in this

Agreement and bring any civil and/or administrative claim, action, or proceeding against CPHL for the claims that would otherwise be covered by the releases provided in Paragraphs 10 and 12, above. CPHL agrees that (i) any such claims, actions, or proceedings brought by the State are not subject to an “automatic stay” pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this paragraph, and CPHL shall not argue or otherwise contend that the State’s claims, actions, or proceedings are subject to an automatic stay; (ii) CPHL shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppels, or similar theories, to any such civil or administrative claims, actions, or proceedings that are brought by the State within sixty calendar days of written notification to CPHL that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on October 20, 2014 and (iii) the State has a valid claim against CPHL in an amount no less than \$1,650,000, plus civil penalties to be determined by the Court, and the State may pursue its claim in the case, action or proceeding referenced in the first clause of this paragraph, as well as any other case, action or proceeding.

- d. CPHL acknowledges that their agreements in this paragraph are provided in exchange for valuable consideration provided in this Agreement.

29. Except as expressly provided to the contrary in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

30. This Agreement is governed by the laws of the New York State without regard to choice of law or conflict of laws principles. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the United States District Court for the Eastern District of New York. Notwithstanding the foregoing, the State does not waive any objection it may have that a claim against CPHL for payment by the State is properly vested in the New York State Court of Claims.

31. Any failure by the United States and/or State to insist upon the strict performance of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and the United States and/or State, notwithstanding that failure, shall have the right thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

32. If any part of this Agreement shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction other than payment of the Total Medicaid Settlement Amount, such invalidity or unenforceability shall not affect the remainder of this Agreement, which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.

33. The terms of this Agreement shall remain effective notwithstanding the death or incapacity of any person, or any appeal, collateral attack, or any challenge to any criminal charge, conviction, plea or sentencing of any person, including but not limited, to the reversal, modification, or dismissal of all or any portion of such charge, conviction, plea or sentence, or the charging, conviction, plea or sentencing of any other person.

34. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended, changed, modified or waived except in writing signed by the Parties affected by said amendment, change or modification.

35. CPHL acknowledges and represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever and upon due deliberation with the advice of counsel.

36. Relator acknowledges and represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever, and that the Relator has entered into this Agreement upon due deliberation with the advice of counsel.

37. The undersigned counsel and other signatories represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

38. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement. Facsimiles and electronically transmitted versions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

39. This Agreement is binding on CPHL's successors, transferees, heirs and assigns.

40. This Agreement is binding on Relator's successors, transferees, heirs and assigns.

41. The captions in this Agreement are provided for reference only and are not operative terms of this Agreement.

42. For purposes of construction, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

43. CPHL agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Agreement or creating the impression that this Agreement is without factual basis. Nothing in this paragraph affects CPHL's: (a)

testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the State is not a party.

44. Within thirty (30) days after the State and the United States have received all payments required under this Agreement from CPHL, with any applicable interest, the United States, State and Relator shall file a Joint Notice of Partial Dismissal in the Civil Action pursuant to Fed. R. Civ. P. 41(a) dismissing their claims for the Covered Conduct with prejudice as to the United States, the State and Relator, and dismissing all remaining allegations in Relator's complaint without prejudice as to the United States and the State, and with prejudice as to the Relator.

45. Any notices pursuant to this Agreement shall be in writing and shall, unless expressly provided otherwise herein, be given by overnight mail, and shall be addressed as follows:

IF TO THE UNITED STATES:

United States Attorney's Office
Eastern District of New York
c/o Joseph Marutollo
Assistant United States Attorney
271 Cadman Plaza East
Brooklyn, NY 11201

IF TO THE ATTORNEY GENERAL and the STATE:

New York State Attorney General
Medicaid Fraud Control Unit
Attn: Special Deputy Attorney General, Civil Enforcement Division
28 Liberty Street
New York, NY 10005

IF TO DEFENDANT:

David Luntz, Esq.
Hinman Straub
121 State Street
Albany, NY 12207

Civil Action No. 14-6129

IF TO RELATOR:

Daniel M. Felber, Esq.
100 Park Avenue, Suite 1600
New York, NY 10017

46. The Effective Date of this Agreement shall be the date of signature of the last signatory to this Agreement ("Effective Date of this Agreement").

RICHARD P. DONOGHUE
United States Attorney
Eastern District of New York
Attorney for United States
271 Cadman Plaza East
Brooklyn, New York 11201

By: Joseph A. Marutollo
Joseph A. Marutollo
Assistant United States Attorney
United States Attorney's Office
Eastern District of New York
271-A Cadman Plaza East, 7th Floor
Brooklyn, New York 11201
(718) 254-6288


Dated: August 27, 2018

By: Lisa M. Re LMR
Lisa M. Re
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services
(202) 205-9366

Dated: Aug. 17, 2018

Civil Action No. 14-6129

BARBARA D. UNDERWOOD
ATTORNEY GENERAL OF THE STATE OF NEW YORK
Attorney for the State of New York

By: 
Andrew Gropper
Special Assistant Attorney General
Medicaid Fraud Control Unit
28 Liberty Street
New York, New York 10005
(212) 417-5395

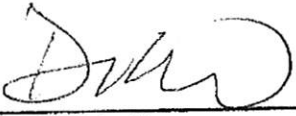
Dated: August 22, 2018

Civil Action No. 14-6129

CENTERS PLAN FOR HEALTHY LIVING LLC


By: **Mark Bloom, CEO**

Dated: Aug 23, 2018


David Luntz, Esq.
Hinman Straub
121 State Street
Albany, NY 12207
T: 518-436-0751
Attorney for Centers Plan for Healthy Living LLC

Dated: Aug 24, 2018

Civil Action No. 14-6129



HEEMA SHIEVDAYAL
Relator

Dated: 08/15, 2018

Daniel Felber
Daniel M. Felber, Esq.
100 Park Ave., Ste. 1600
New York, NY 10017
(212) 425-4250
Attorney for Relator

Dated: August 15, 2018

SO ORDERED:

Brooklyn, New York
~~SEP 11 2018~~, ~~2018~~

SEP



THE HONORABLE ERIC N. VITALIANO
UNITED STATES DISTRICT JUDGE

10/10/18

10/10/18

10/10/18



SEP 11 2018

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10/10/18

EXHIBIT A to Stipulation and Order of Settlement

Confidential Health
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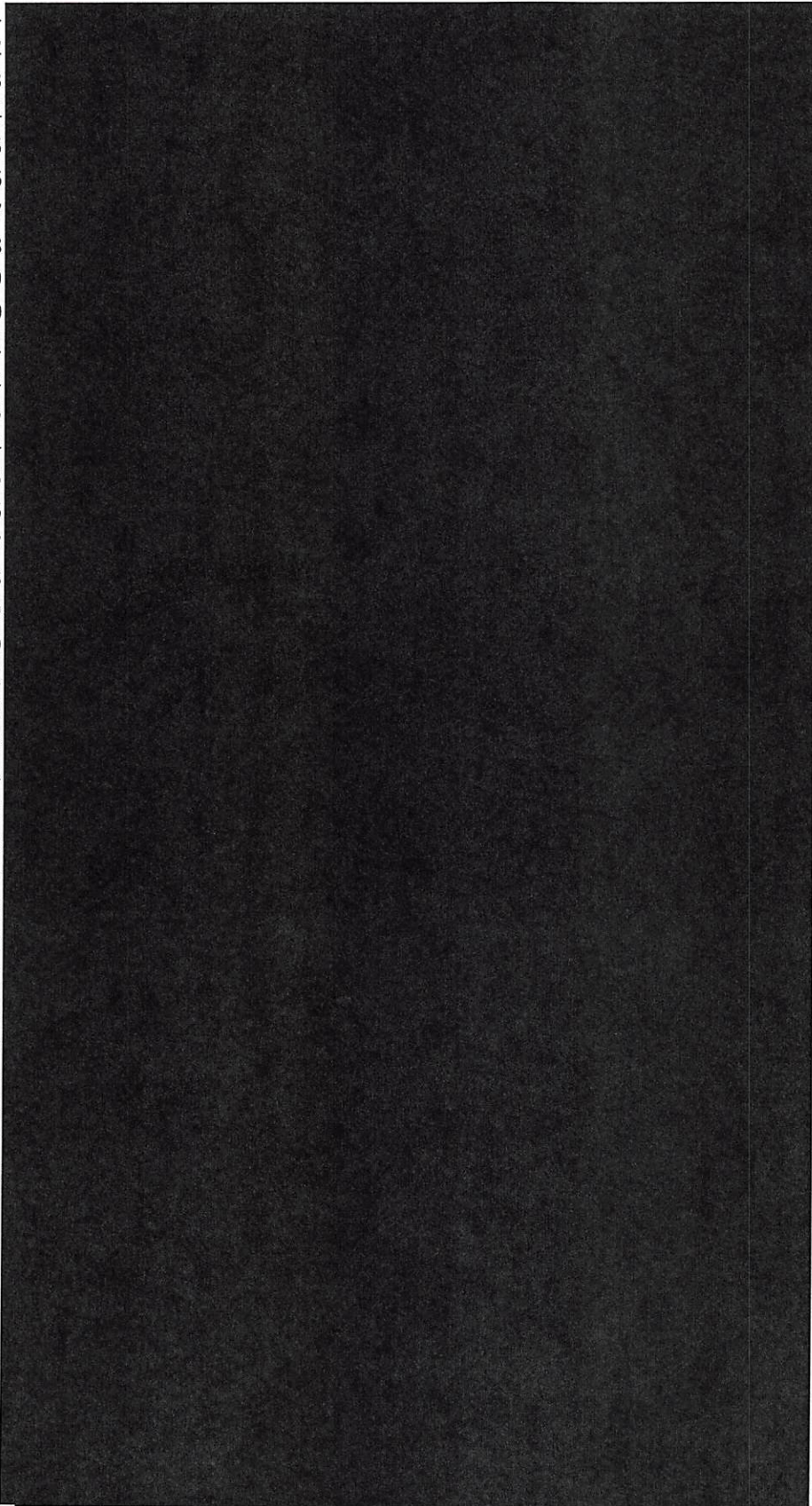


EXHIBIT B to Stipulation and Order of Settlement*

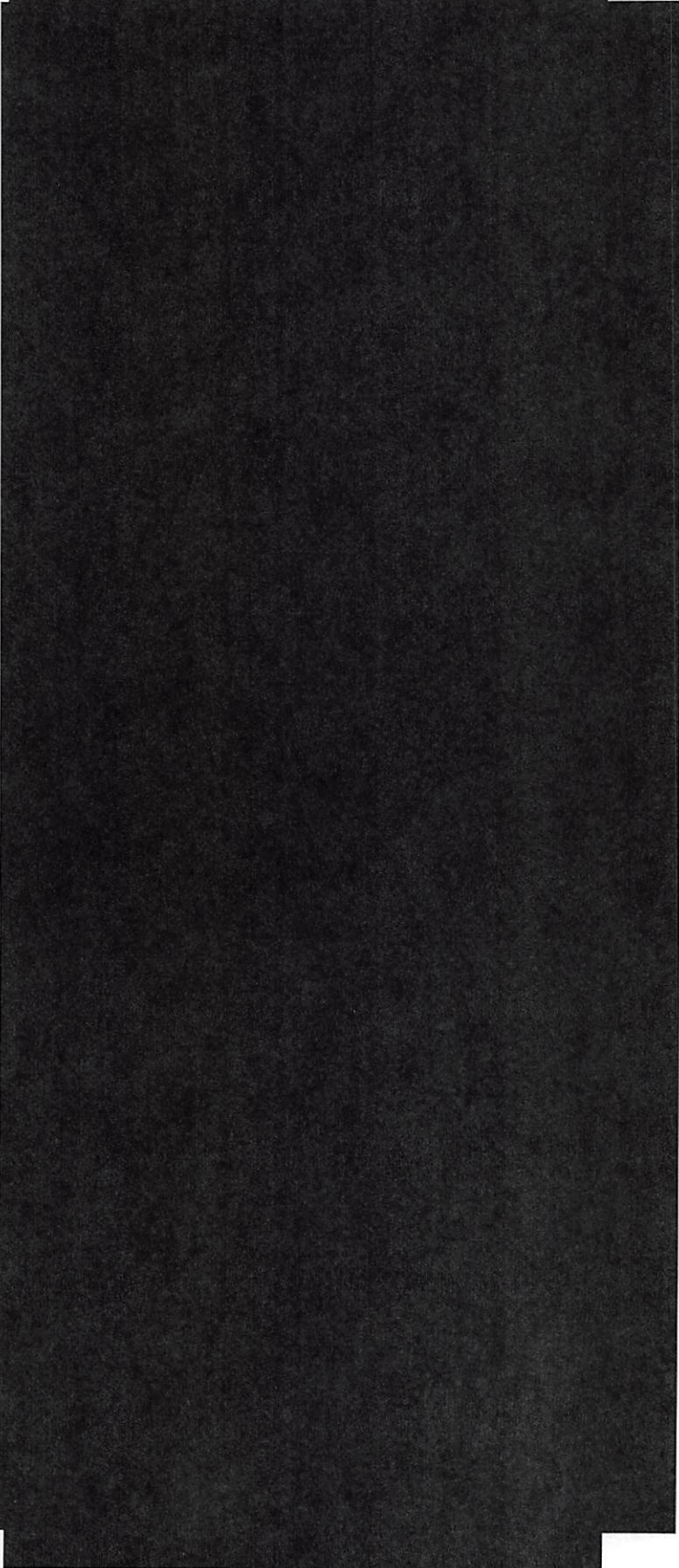
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Confidential Health
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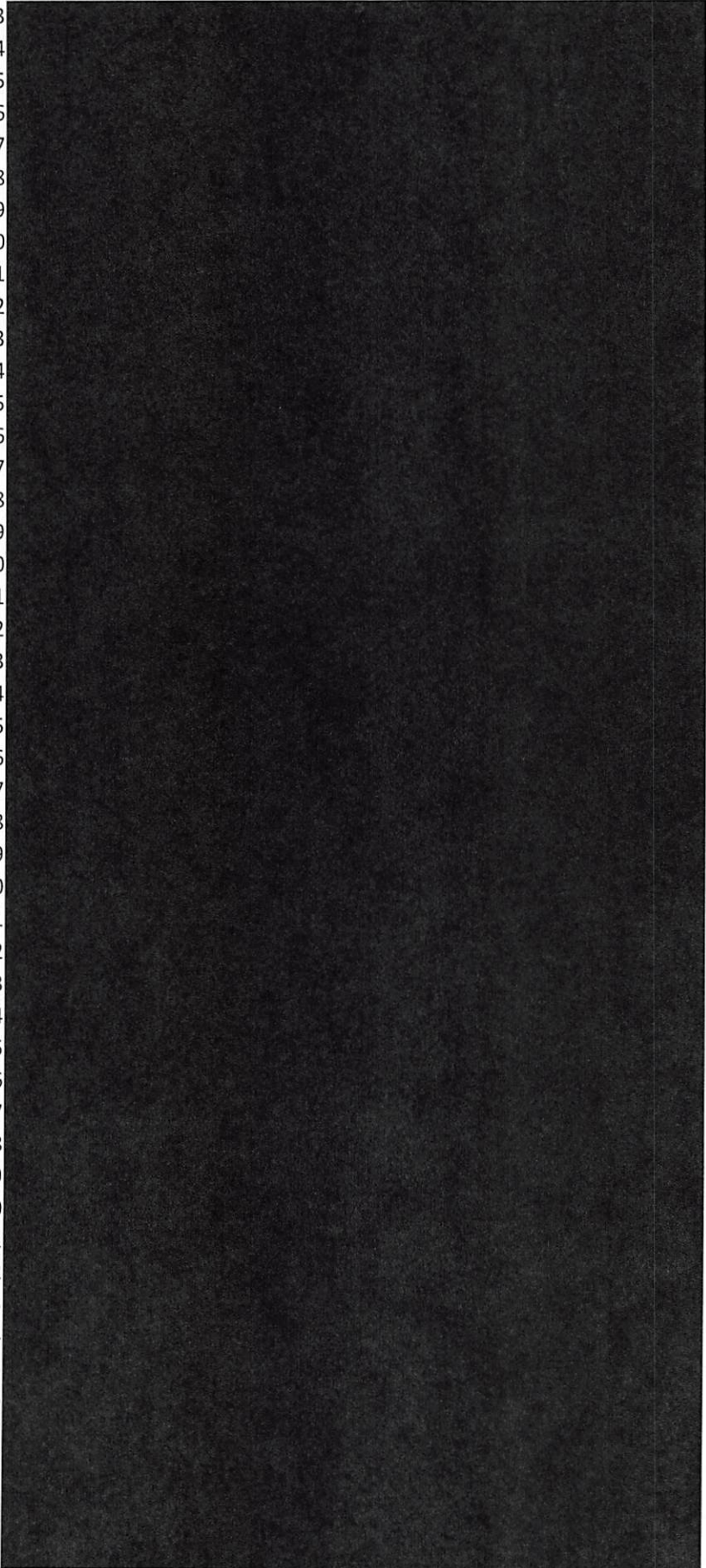
*The United States and the State analyzed a randomly drawn sample of the Centers Plan members identified on this Exhibit B in calculating damages which formed the basis for this Stipulation and Order of Settlement.

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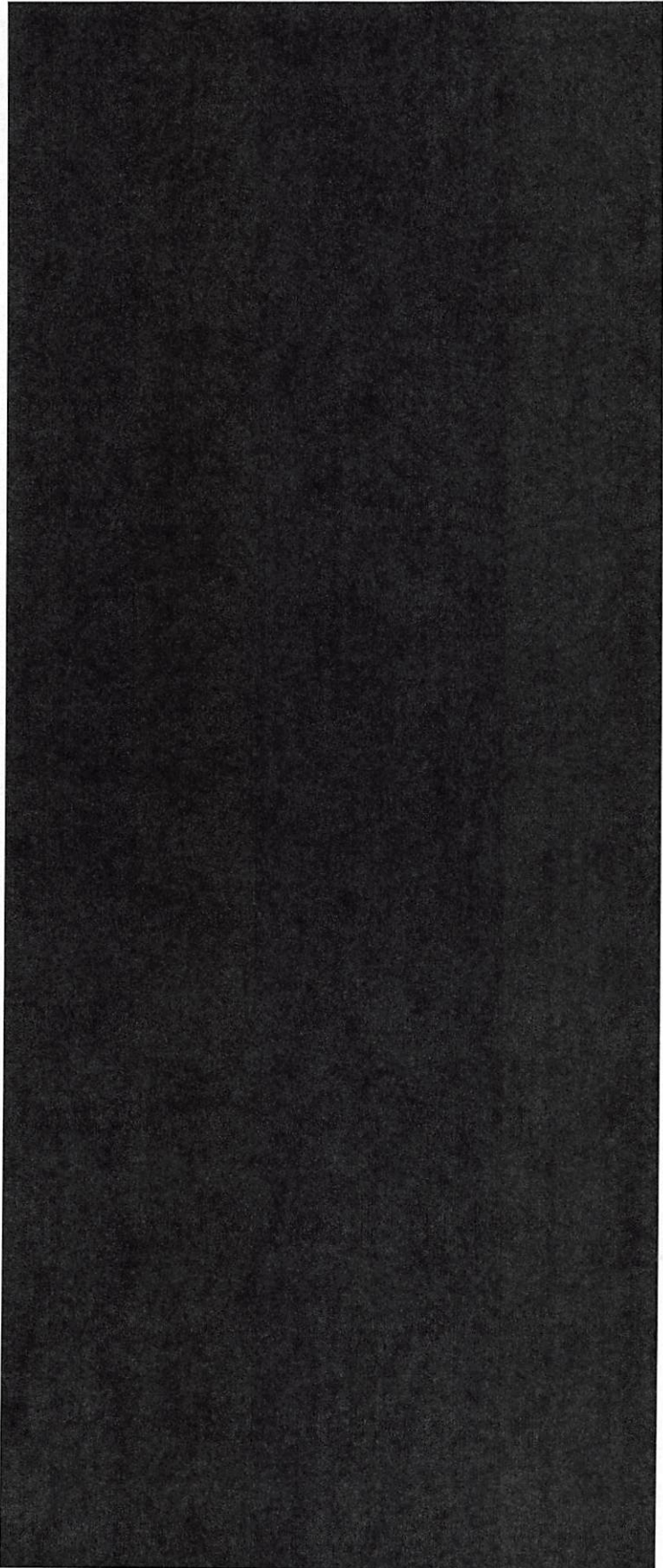
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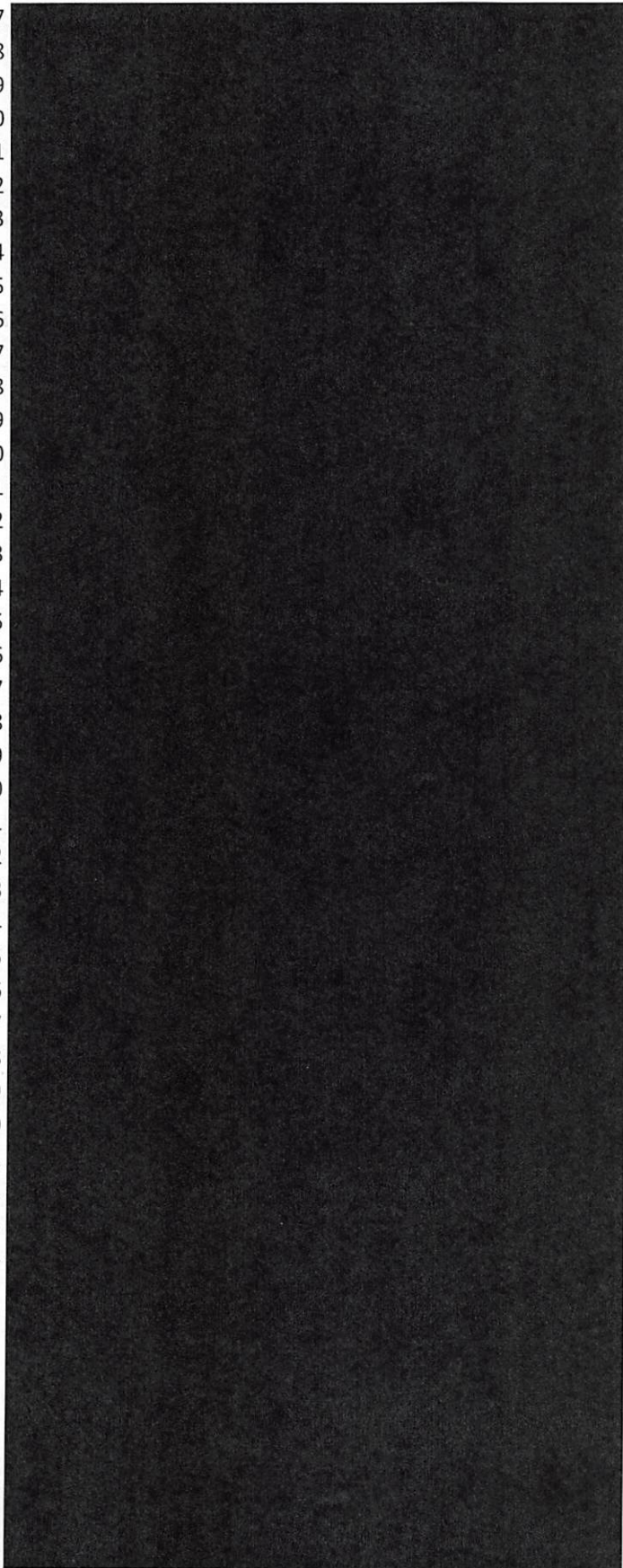
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