ATTORNEY GENERAL OF THE STATE OF NEW YORK
BUREAU OF INTERNET AND TECHNOLOGY

In the Matter of

Assurance No. 26-028

Investigation by LETITIA JAMES,
Attorney General of the State of New York, of

THIRTY MADISON, INC.,

Respondent.

<u>ASSURANCE OF DISCONTINUANCE</u>

The Office of the Attorney General of the State of New York ("OAG") commenced an investigation pursuant to General Business Law §§ 349 and 350 into the enrollment and cancellation policies and practices of Thirty Madison, Inc. ("Thirty Madison" or "Respondent"). This Assurance of Discontinuance ("Assurance") contains the findings of the OAG's investigation and the relief agreed to by the OAG and Thirty Madison, whether acting through its respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries (collectively, the "Parties").

OAG's FINDINGS

1. Thirty Madison is a Delaware corporation and a direct-to-consumer online business that offers health-related products and services under several different specialized brand names:

a. <u>Keeps</u>: Products for hair loss.

b. <u>Cove</u>: Products for migraines.

c. <u>Facet:</u> Products for skin conditions. This brand was discontinued in

March 2025.

d. Picnic: Products for allergies. This brand was discontinued in June 2023.

e. Evens: Products for gastrointestinal issues. This brand was discontinued in August 2022.

f. Nurx: Products and services for a variety of health conditions, including reproductive health, sexual health, and mental health.

2. All six brands offer (or previously offered) both prescription and non-prescription products.

3. All six brands offer (or previously offered) prescription products on an automatically charged refill basis and non-prescription products on an automatically renewing subscription basis. All products can be purchased entirely online , though customers who requested prescriptions were required to complete a medical intake form that was reviewed by a doctor.

4. Subscriptions renew automatically at the end of the subscription term unless the consumer takes affirmative action to cancel their subscription. Prescriptions automatically refill until the user does not renew their prescription.

5. Thirty Madison misrepresented, both expressly and by implication, in its enrollment and cancellation processes for its automatically renewing subscriptions or automatically charged prescription refill programs.

6. Thirty Madison's marketing approach was similar across all six brands.

7. This Assurance will detail issues with the Keeps brand and cover material differences in marketing the other brands. Unless otherwise noted, all issues identified with the

Keeps brand were also present for the other Thirty Madison brands.

8. Unless otherwise noted, the activity below took place from at least February 2021 until approximately December 2023 (the "Relevant Period").

<u>Keeps</u>

9. Keeps was Thirty Madison's flagship brand for hair loss. Keeps had the most subscribers until Thirty Madison acquired Nurx in 2022.

Keeps' Material Terms

10. During the Relevant Period, Keeps did not clearly and conspicuously disclose in the enrollment process the material terms of its automatically renewing subscriptions or automatically charged prescription refill programs. Keeps also did not disclose all charges upfront, a practice known as "drip pricing". In particular, Keeps failed to clearly and conspicuously disclose, **before** a customer committed to a purchase:

a. that non-prescription products were offered on an automatically renewing subscription basis;

b. that prescription products were offered on an automatically charged refill basis;

c. the terms of the automatically renewing subscriptions or automatically charged prescription refill programs, such as the length of term and how long promotional pricing applied;

d. the cancellation policy or how to cancel;

e. that, for prescription purchases, in order to receive an already-purchased, non-refundable prescription product, the consumer was required to (i) complete a lengthy medical intake form involving sensitive information, (ii) upload pictures of their head, and (iii) upload pictures of their government-issued ID; and

f. that, for prescription purchases, if the consumer wished to renew their prescription after it expired, they would be charged a $5 doctor consultation fee to renew their prescription.

11. Keeps also failed to send customers an acknowledgment setting forth the terms of the purchased automatically renewing subscriptions or automatically charged prescription refill programs, the applicable cancellation policy, and how to cancel.

Keeps Online Enrollment Procedures

12. Consumers could enroll on Keeps' website, www.keeps.com in a Keeps automatically renewing subscription or automatically charged prescription refill program, through a (i) a standard website screen flow (the "E-Commerce Flow"); (ii) by directly purchasing a product ("Shop All Flow"); or (iii) the Let the Doctor Decide flow.

Keeps E-Commerce Flow

13. The Keeps E-Commerce Flow started with a "mini-quiz" asking a few questions about the consumer's hair loss and desired outcome. Keeps then presented the consumer with treatment plan options, all on an automatically renewing basis. Prescription products would refill until not re-prescribed. Keeps offered promotional prices for all treatment plans, depicting the higher, standard price, crossed out on the page.

14. Keeps did not clearly and conspicuously disclose (i) that the non-prescription subscription automatically renewed; (ii) that prescriptions automatically refilled until they are not re-prescribed; (iii) how long the promotional price applied; (iv) that subscriptions would renew at a higher price; (v) that prescriptions may cost more upon refill; (vi) that a higher price

that would apply after the promotional period; (vii) the length of the subscription term or the number of prescription refills; or (viii) how and by when the consumer needed to cancel to avoid incurring subsequent charges.

15. While the offers included text such as "plan frequency" and "deliver every [X] months," that text was not clear and conspicuous. The text was in small, light gray font, placed next to darker font, and not in proximity to the conspicuous, bright red purchase button. As evidenced by the complaints set forth below, many consumers believed they were purchasing a one-time supply (for three, six, or twelve months) not an automatically renewing subscription or automatically charged prescription refill program.

16. A disclosure that the product purchase was a "subscription" or automatically charged prescription refill program, appeared during the account creation at checkout. However, it was not clear and conspicuous, appearing under passive content on the right side of the page and not in proximity to the active content and "continue" button on the left side of the page. The disclosure also appeared in small, light font below the treatment plan summary and discounted price, which were in large, bolded font.

17. On the checkout page, the disclosures were also not clear and conspicuous. They appeared in small, light gray font, below or otherwise not in proximity to the conspicuous black "place order" button.

Requirements for Keeps Prescription Products Disclosed Only <u>After</u> Purchase With No Automatic Refunds

18. Keeps offers both prescription and non-prescription products. During the Relevant Period, if the purchase included a prescription product, **after** their purchase was complete the consumer was directed to a page where —for the first time — they were informed that they would need to complete a "brief consultation with a licensed doctor" to receive their already-

purchased product. Consumers were promised a refund of their already completed product purchase "if your Keeps doctor recommends against treatment." The consumer was prompted to click a button to "start your doctor's visit." Consumers were required to accept Keeps telehealth and privacy policy to proceed with their consultation.

19. The "brief consultation with a licensed doctor" or "doctor's visit" referred to on the website was actually a written medical intake form that was reviewed by a doctor at a later time. It was not a "live" consultation between a doctor patient in real time. This type of review is known as an "Asynchronous Consultation."

20. The medical intake form asked for sensitive demographic, lifestyle, and medical information, including race, gender identity, alcohol consumption, and history of suicide attempts. Keeps also required the hair loss medication consumer to submit photos of their head and an image of their government-issued ID. These requirements were not disclosed to the user prior to purchase.

21. If the consumer did not wish to provide this information or otherwise failed to complete these steps, Keeps did **not** automatically process a refund. Rather, consumers were required to search for how to cancel and start the cancellation process described below.

22. If the consumer completed the medical intake form and uploaded the photos, the consumer was then informed — for the first time — of a doctor's consultation fee. Consumers were **not** informed that Keeps requires them to complete an **annual** medical intake form subject to a paid medical provider review. Keeps charged $5 for this annual review, which it waived only for the first year. Keeps presented the consultation fee as "FREE" in bright red lettering, with the $5 price crossed out. Keeps did not inform users that the consultation fee would be charged each year that the consumer renewed their prescription.

23. After the consumer completed the medical intake form, a doctor reviewed it and, if approved, Keeps shipped the first product. If the doctor determined that the consumer should not receive the purchased product, Keeps did **not** automatically refund the consumer. Instead, the consumer was directed to the Keeps customer service to start the cancellation process described below.

Keeps Shop All Flow

24. A consumer could also purchase an automatically renewing non-prescription product subscription, or an automatically charged prescription refill program, directly from Keeps' product offering page. Keeps did not disclose whether the product was offered on a one-time or automatically renewing basis until after the consumer added the product to their cart.

25. Even in the Keeps shopping cart, Keeps did not clearly and conspicuously disclose that the subscription product automatically renewed, or that prescription refills automatically charged until they were not re-prescribed. The Keeps shopping cart also did not disclose to consumers whether the displayed price was a promotional price, for how long the price applied, or the higher price at which the subscription would renew.

26. The subsequent account creation and checkout screens suffered from the same deficiencies as in the E-Commerce Flow. As in the E-Commerce Flow, Keeps only informed consumers **after** they purchased a product that additional steps needed to be taken in order to receive the product they had already paid for. If a consumer failed to do so, Keeps did **not** automatically provide a refund but required consumers to affirmatively seek out how to request one.

Keeps Let the Doctor Decide Flow

27. Finally, a consumer could purchase a Keeps non-prescription product subscription, or an automatically charged prescription refill program, through the Let The Doctor Decide enrollment flow. The Let the Doctor Decide flow guided the consumer through the mini-quiz, medical intake form, and photo uploads above **before** the consumer purchased anything.

28. When the consumer was prompted to submit their consultation, the consumer was shown the screen that presented the doctor's consultation fee as "FREE" in bright red lettering, with the $5 price crossed out. Keeps did not explain that the fee was an annual cost that was waived for the first year only.

29. After the consumer submitted the medical intake form with required photos, a doctor reviewed it and recommended a product. Once a doctor recommended a product, the consumer could purchase their recommended product through the checkout page. That page does not clearly and conspicuously disclose that non-prescription subscriptions automatically renew and prescriptions will automatically refill until they are not re-prescribed, the length of the term, if a promotional price applied, how long that price applies, any higher price that would subsequently apply, and how and by when the consumer needed to cancel to avoid incurring subsequent charges.

30. Keeps did not send the consumer an acknowledgment of their purchased automatically renewing subscriptions, or automatically charged prescription refill programs, for any of the enrollment flows.

31. Since at least February 2021, consumers have filed numerous complaints with Thirty Madison, the Better Business Bureau ("BBB"), and the FTC about Keeps' misleading online enrollment procedures. The complaints make clear that consumers did not realize they

were purchasing an automatically renewing subscription or automatically charged prescription refill program, did not expect a price increase, and did not understand the other terms of the purchase:

> *"I ordered an initial kit from this company to try out their products back in May or June of this year. To my knowledge, I did not have a recurring agreement to continue their services, I simply made an initial order to see if I liked their products. However, they attempted to charge my account again a couple of months later, for a significantly higher cost than the original order was." (October 2023)*
>
> *"Way over priced and hook u into a subscription and ship your second 'order' before they tell you that its coming up. they [raise] the prices up even more on the second order." (September 2023)*
>
> *"I ordered a three month suppl[y] to test it out but I didn't know it had an auto recurring subscription." (August 2023)*
>
> *"I placed an order on November 25, 2022 for a trial …. I was never advised this is a subscription service. I received a package in the mail on February 24, 2023 and noticed a charge of $174.00 from 'Thirty Madison' dated February 19, 2023. The initial order was $89.50. I never received any notice that it was their intent to send an additional order at a higher price." (February 2023)*
>
> *"Ordered one time purchase. Nowhere in checkout does it say you are automatically enrolled in a subscription based service." (May 2022)*
>
> *"They offer a trial of their product, really they sign you up for a subscription." (March 2022)*
>
> *"I don't remember signing up for an auto renewing service. the fact that i can't make a one time purchase makes me want to cancel this." (March 2022)*
>
> *"I got an email staying that I will be shipped items but no warning of the charge nor confirmation of over 100 dollars. There should of been effective communication regarding this upcoming charge since it is a lot." (August 2021)*
>
> *"…I was emailed that a second shipment of the product was sent to me…. I don't remember seeing anything about a subscription service when I originally tried the product…." (December 2020)*

32. Consumer complaints also specifically noted that Keeps' failure to clearly and conspicuously disclose the terms of its subscriptions and automatically charged prescription refill

programs was exacerbated by Keeps' failure to send an acknowledgement with those terms:

> *"Keeps subscription model is sneaky, be careful. I don't recommend using Keeps. First, I didn't know I was on a subscription plan. I could not find any emails from them that mention I'm on a subscription plan." (March 2023)*
>
> *"I looked through every email I have ever received from them and nowhere did it state I was in an auto renewal plan nor did it state I would automatically be charged." (June 2022)*
>
> *"Was never shown an order completion page or receipt when I signed up. Didn't know I was subscribed and they sneakily charged me months later. I couldn't get a refund despite all this and their customer service is God awful." (December 2021)*

Keeps Cancellation Procedures

33. Keeps did not inform consumers of its cancellation policy, how to cancel, and by when the consumer needed to cancel to avoid the next charge anywhere in the enrollment flow or any acknowledgment.

34. Keeps also made its cancellation process burdensome and time-consuming, sending multiple follow-up communications, sometimes over the course of several days, before effectuating cancellation requests. Keeps' policy was to eventually cancel the automatically renewing subscriptions or automatically charged prescription refill programs of consumers who did not respond to Keeps' follow-up inquiries. However, Keeps' communications suggested that consumers needed to respond in order for their cancellation request to be processed.

35. From at least February 2021 and until December 2021, Keeps customers could cancel by phone or through a web form. Keeps advised consumers how to cancel on the FAQ page of its website, which instructed consumers, "Please note your cancellation is not official until you receive a cancellation confirmation email."

Keeps' "Win Back" Protocols Added to Already Burdensome Cancellation Requirements.

36. The web form, hyperlinked in the Keeps FAQ, was used for all Thirty Madison brands. Submitting a cancellation request through the web form did **not** effectuate the cancellation. The request was routed to the relevant brand's customer service team. Then, instead of promptly processing the cancellation request, the customer service team responded to the consumer with a request for a cancellation reason and attempted to "win back" the customer.

37. Starting December 2021, in addition to phone and web form, consumers could also cancel by text and online chat. Keeps also began processing cancellation requests received by email, but did not inform consumers of that option.

38. For all cancellation methods, Keeps instructed its customer service agents to always obtain a cancellation reason from the consumer. Customer service scripts communicated to consumers that providing a reason was necessary to effectuate the cancellation request. For example, consumers who had already requested cancellation were subsequently asked "In order for me to process your cancellation, can you tell me why you've decided to cancel?"

39. Based on the consumer's cancellation reason, customer service agents were provided different "win back" scripts to use. For example, if the consumer's cancellation reason was based on price, customer service agents would offer a discount.

40. If the consumer did not respond to Keeps' request for a cancellation reason, Keeps sent the consumer a series of automated communications.

a. Keeps sent an automated communication after 24 hours reminding the consumer to respond. This reminder also communicated that the consumer needed to respond in order for their cancellation request to be processed:

> "I'm following up with you on your cancellation request to see if you have any questions about my last message. Please let me know how you'd like to proceed."

b. If the consumer did not to respond to Keeps' second request for a cancellation reason, Keeps sent another automated communication after five days:

> "I sent you a message a few days ago regarding your request to cancel your Keeps subscription. I'm following up again to see how you would like to proceed. If you have any questions, I'm also here to answer those, so just let me know!"

c. If the consumer did not respond to Keeps' third request for a cancellation reason, Keeps sent an automated communication on the seventh day, which advised the consumer that their automatically renewing subscription or automatically charged prescription refill program would be canceled, they would receive an automated cancellation email from Keeps within 24 hours, and, if they did not, they should reach out to Keeps.

41. Receiving a cancellation confirmation email from Keeps was important because, according to Keeps' policy as stated on the Keeps' FAQ page, a consumer's automatically renewing subscription or automatically charged prescription refill program was not canceled until they received that cancellation confirmation email. Thus, even if a consumer submitted a valid cancellation request, Keeps placed the burden on the consumer to ensure they received a cancellation confirmation and to follow up with Keeps if they did not.

42. If a consumer responded to Keeps' request for a cancellation reason, Keeps responded with an applicable win back script—*e.g.*, offering discounts to customers who wished

to cancel due to price or offering to delay a shipment for customers who had a surplus of product. Keeps specifically instructed its customer service agents to "Be AGGRESSIVE" in attempting to win back the customer and continue the automatically renewing subscription or automatically charged prescription refill program.

43. Each win back script ended with language that communicated the consumer was required to respond in order for their cancellation to be processed. These signoffs included phrases such as "I'll wait to hear back from you before taking any further action on your account" and "please let me know how you'd like to proceed."

44. If the consumer declined the win back offer, then their cancellation request was finally processed. If a consumer did not respond to Keeps' win back attempt, Keeps sent the same automated follow-up communications described above after 24 hours, five days, and seven days.

45. The Keeps cancellation process stretched out for weeks for requests made through email, text, and online web form. A consumer could receive up to seven communications from Keeps over the course of two weeks or more before their request was finally effectuated. Even then, Keeps made it the consumer's responsibility to ensure they received a cancellation confirmation email.

46. As noted above, if a consumer did not respond to Keeps' follow-up communications, they received an email on the seventh day stating that their automatically renewing subscription or automatically charged prescription refill program would be cancelled. But the customer's automatically renewing subscription or automatically charged prescription refill program was **not** automatically canceled after they were sent that email. The original support ticket requesting the cancellation simply reappeared in the agent's open ticket queue.

47. Keeps did **not** instruct its customer service agents to push back billing dates or put orders on hold to prevent charging consumers who requested cancellation but did not respond to these win back communications. In contrast, if a consumer responded to Keep's win back communications, Keeps instructed its customer service agents to push back billing dates and put orders on hold "to ensure they are not charged within the time we are attempting to engage with them."

48. Many consumers complained to Keeps, the BBB, and the FTC that they continued to be charged after making a cancellation request:

> *"On October 4, 2022 I attempted to cancel my $154 recurring subscription. I never received any confirmation that it had been cancelled but I gave them the benefit of the doubt considering the company appears to be reputable. In December I received another shipment AND another $154 charge." (March 2023)*
>
> *"Company charged me $33 for subscription that I canceled and I had contacted well ahead of time to cancel shipment but was charged anyway." (October 2022)*
>
> *"I ordered hair products they had side effects I tried canceling called and still got billed in January now they are trying to submit another order in April and [n]ot canceling my subscription. It was easy to sign up but costly to cancel." (March 2022)*
>
> *"I requested the company to remove me from being automatically billed. They sent me an email telling me how to do it. I went and did it. And I still got billed September 2021 for another shipment of their product. They are refusing to refund the money…." (September 2021)*
>
> *"I cancelled this back on MAY 06 of this year and as of JULY 6 I am still being charged. I have several, several emails where I CONTINUE to tell them to cancel only to be charged again." (July 2021)*
>
> *"I cancelled my subscription months ago. The website will not allow me to remove my credit card or cancel my account. Keeps charged me for a new 90 day shipment after 6 months without my comment." (June 2021)*
>
> *"I was charged again when specifically asked to cancel this. I want my money refunded back to my account. I stopped using the product months ago and I do not wish to continue." (May 2021)*

Many other consumers complained about how difficult it was to cancel, some specifically noting their frustration with the Keeps' cancellation procedures discussed above:

> *"Totally scammy subscription model. No notice when your orders are processed extremely hard to cancel. Buyer beware." (August 2023)*

> *"I have sent three emails to cancel and they keep trying to sell me stuff instead of canceling my order. I told them to cancel my order and delete my information from their company. At this point to me they are refusing to cancel and I will have to contact my bank. The aggressive behavior from this company is criminal and Im sure a lot of older people cave in to these types deceptive practices." (December 2022)*

> *"[T]hey send misleading advertisements that make you think your subscription has been cancelled if you only read the title of the email." (July 2022)*

> *"They make it difficult to cancel. Went on their website and canceled. Got a email with subject that said they're sorry I am canceling. I thought it was just a email confirming my cancelation so I never opened. But inside the email they have a place you have to sign to confirm canceling. I got a email a month or so later telling me I had a shipment on the way. Was I shocked! I thought I canceled. I immediately contacted them and said I'm going to refuse delivery and send it back which I did. They of course then tell me about the need to confirm in the cancelation email that I really wanted to cancel. Crazy. They knew I wanted to cancel. Then they didn't want to refund me even though I canceled and they knew it." (September 2021)*

> *"To cancel, it very hard to do so. You have to wait 24 hours for someone to get back to you, if you don't get a call and happen to forget - which is what they hope you do, they still will charge you regardless of who you talked over the phone." (July 2021)*

Keeps New Cancellation Mechanism

49. Starting on or about October 13, 2022, consumers could also request cancellation through their online account by completing a support questionnaire. Until approximately December 2023, Keeps did not clearly and conspicuously disclose this method of cancellation—or any other method of cancellation—in its enrollment flow or a post purchase acknowledgment. Keeps advised New York consumers of this option in the FAQ and in small, light gray font in the

bottom left corner of the consumer's online account page.

50. On the first page of the support questionnaire, cancellation did not appear as an option. The consumer had to choose "I need help with something else" to proceed to a second page that included the cancellation option.

51. After the consumer chose "I'd like to cancel my subscription," Keeps presented a third screen requiring the consumer to choose a cancellation reason. Depending on the reason, the consumer could be required to navigate up to four additional screens before they could submit their cancellation request.

52. For some consumers, Keeps considered cancellation to be effective upon submission of this online cancellation questionnaire. For other consumers, submitting the online questionnaire constituted a cancellation request upon which a customer service agent would reach out to begin the process of soliciting a cancellation reason and attempting a win back, as described above.

Keeps Continued Charging Consumers Even After Their Prescription Expired

53. When a Keeps prescription expired, consumers were required to complete a new medical intake form for Asynchronous Consultation in order to renew their prescription and continue receiving their product. A Keeps medical provider would reach out to the subscriber to prompt them to complete the renewal medical questionnaire. The message stated that the customer's prescription would expire and they would **not** receive their next refill "unless you complete this required step."

54. While the provider message stated that the consumer would not receive their next refill unless they completed the renewal medical questionnaire, Keeps failed to disclose that it would **charge** the consumer for their next refill regardless of whether the consumer completed

the annual prescription renewal. In other words, even when a consumer's prescription had expired, consumers continued to be charged for subsequent unshipped refills, to the surprise of many consumers:

> *"I never followed up [on the renewal] as I only used about half of my first treatment when I stopped so I assumed I wouldn't have to worry about it. Six months later I get charged $113.00 without any warning or consultation emails. I was not told this is an automatic subscription even when I don't consult/confirm with the doctor." (June 2023)*

> *"I first subscribed to the 12-month Finasteride and Minoxidil plan in April 2022. After receiving my first delivery, the website said that Keeps would not send my next refill until I had a follow-up annual consultation with my provider. I planned to ask my provider a few questions to determine whether or not I would continue treatment. Before I had a chance to reach out to my provider, I was charged for another full year, a total cost of $398.00." (March 2023)*

> *"Keeps kept emailing me saying my prescription was running out and I needed to do a follow-up to continue it. Their products havent been working for me so I was going to let my prescription run out and move on. Then I got an email saying I was charged for a full year again, but they couldnt send me the prescription until I did a follow up because it was illegal but I guess charging my credit card without authorization is okay." (June 2022)*

> *"Keeps has charged me since the expiration of the Annual Renewal which is required for them to send you a product." (February 2022)*

Cove

55. Cove is a Thirty Madison brand offering products for migraines. Cove suffered from materially similar issues as those described above for Keeps. Some distinctions are noted below.

Cove Material Terms

56. During the Relevant Period, Cove engaged in drip pricing and did not clearly and conspicuously disclose the material terms in its online purchase flows **before** a customer committed to a purchase, specifically:

a. the upfront a consultation fee and ongoing care fee required for prescription products;

b. that the care fee automatically renewed for $30 every three months;

c. that, in order to receive an already-purchased, non-refundable prescription product, the consumer was required to (i) complete a lengthy medical intake form involving sensitive information, (ii) upload pictures of their skin or videos of their bodies, and (iii) upload pictures of their government-issued ID; and

d. its cancellation policy or how to cancel.

57. In certain cases, Cove also enrolled the consumer in automatically charged prescription refill programs without the consumer's review or express consent.

Cove Enrollment Flows

58. Once a consumer selected a product and proceeded to check out, if a prescription product was included, Cove prompted the consumer to either enter medical insurance details or choose "I'll pay without insurance."

59. <u>Enrollment Flow Without Insurance</u>: If a consumer chose to pay without insurance, they were directed to the checkout page, where an initial consultation fee and a Cove Care fee appeared in the consumer's shopping cart. The checkout page was the first time these additional charges were disclosed to the consumer. The initial consultation fee ranged from $65 to $99, and the Cove Care fee was $30 every three months.

60. Cove also failed to clearly and conspicuously disclose that the Cove Care fee automatically renewed for $30 every three months. In the order summary, Cove showed the price of the Cove Care fee as $0, with $30 crossed out and in light gray font. The word "quarterly"

appeared in much smaller, light gray font. These disclosures were not clear and conspicuous. And while Cove advertised "first three months free" in highlighted text next to the Care fee, Cove did not clearly and conspicuously disclose that Cove Care was a required part of a Cove automatically renewing subscription or automatically charged prescription refill program rather than an add-on that the consumer could cancel after trying it for free for three months.

61. Enrollment Flow with Insurance: If a consumer chose to pay with insurance and was in-network with Cove, Cove informed the consumer they would pay $0 that day and provided an estimated out-of-pocket fee that the consumer would owe later. Cove informed the consumer that the out-of-pocket fee was for either their initial consultation or for their "first three months of care." This fee was not the consumer's prescription coverage co-payment.

62. This was the first time a consumer who chose to pay with insurance was informed of any fee in addition to the cost of their chosen products.

63. At the checkout page, in the order summary, Cove showed in bold that $0 was "Due Today." Under "Pay Later," Cove showed a "New Patient Bundle" in the amount of the estimated out-of-pocket fee that appeared to cover the following: Initial Consultation, Mind for Migraine & Coaching, and Cove Care.

64. Cove displayed the Cove Care fee as though it were covered under the "New Patient Bundle" payment. Cove failed to clearly and conspicuously disclose that, in fact, Cove Care was a separate charge of $30 that would automatically renew every three months. Cove relegated this disclosure to small, light gray font at the bottom right of the page.

Requirements for Cove Prescription Products Disclosed Only After Purchase With No Automatic Refunds

65. During the purchase process Cove noted an "online consultation" was required for prescriptions. Once the consumer purchased their prescription product they were informed that

they needed to complete a neurological screening consisting of a lengthy medical intake form, submit two video recordings (face and upper body), and upload a photo of a government-issued ID.

66. While Cove informed the consumer that an "online consultation" was required before purchase, only **after** purchase was it explained that this was a written medical intake form, and two video recordings of their body, followed by an Asynchronous Consultation. The consumer was not informed that this process asked for sensitive demographic, medical, and lifestyle information, such as the consumer's race and gender identity, recreational drug use, and whether the consumer was experiencing depression.

Cove's Let the Doctor Decide Flow

67. Cove's Let the Doctor Decide Flow differed from Keeps. Once the consumer submitted the required information, a doctor reviewed the medical intake form and recommended a treatment plan. The consumer was notified by email when their treatment plan was ready.

68. The notification email included a large graphic, a message asking the consumer to review their plan, and a button to click through to the Cove website. At the bottom of the email, under the button to click through to Cove's website, was small font text stating that if Cove was not contacted by the consumer within seven days, their first shipment would start processing.

69. The notification email did **not** include any details of the recommended treatment plan—*e.g.,* what the product was, the price of the product, whether the product automatically renewed or refilled and, if so, the length of the automatically renewing term. The consumer was required to log in to their Cove account to review their recommended treatment plan within seven days before they were enrolled in and charged for an automatically renewing product

subscription or automatically charged prescription refill program. Thus, Cove enrolled consumers without informing them of these important terms and without obtaining affirmative, informed consent.

70. At the end of 2023, Cove ceased this practice for New York consumers, waiting until a consumer affirmatively accepted their treatment plan before processing the first product shipment.

Facet

71. Facet is a Thirty Madison brand that offered products for skin conditions on an automatically renewing basis from April 2022 until March 2025. Facet suffered from materially similar issues as those described above for Keeps. Some distinctions are noted below.

Facet Material Terms

72. Since at least April 2022, Facet engaged in drip pricing and did not clearly and conspicuously disclose the material terms in its online purchase flows **before** a customer committed to a purchase:

a. that it treated only seven skin conditions.

b. that a discounted price applied only to the consumer's initial order and a higher price would apply to subsequent orders;

c. the consultation fee and care fee required for prescription products;

d. that the care fee automatically renewed for $30 every three months;

e. that, in order to receive an already-purchased, non-refundable **prescription** product, the consumer was required to (i) complete a lengthy medical intake form involving sensitive information, (ii) upload pictures of their skin, and (iii) upload pictures of their government-issued ID;

f. that if a consumer's skin concern fell outside the seven conditions that Facet treated or was not able to be diagnosed based on photos, the consultation fee would not be refunded; and

g. its cancellation policy or how to cancel.

Facet Online Enrollment Procedures

73. Facet did not clearly and conspicuously disclose to consumers, **before** the purchase of products requiring a medical consultation, that (i) Facet was able to treat only seven skin conditions, (ii) if a consumer's skin concern fell outside these seven conditions or was not able to be diagnosed based on the uploaded photos, the consumer was deemed not a match for Facet, and Facet did not refund the consultation fee, and (iii) Facet did not automatically refund any purchased products.

74. While Facet's landing page listed the seven conditions that it treated, Facet placed this information "below the scroll"—the part of the website that was not visible unless the consumer scrolled down—while placing a prominent "Get Started" or "Start Consultation" button "above the scroll", making it possible for consumers to begin the enrollment process without viewing the information about what Facet was able to treat. Even if a consumer scrolled down the page, Facet did not make clear that the listed conditions were the **only** conditions it was able to treat.

Facet Enrollment Flows

75. If a consumer added a product to their cart, Facet prompted them to create an account. A summary of the consumer's order appeared next to the account creation screen. For prescription products, a consultation fee and an "ongoing care" fee appeared in the consumer's cart.

76. Facet presented the promotional cost of the ongoing care fee in dark font and a higher price crossed out and in light gray font. Facet stated that the first month of the ongoing care fee was free but did not clearly and conspicuously state that the care fee was required for prescription products, that the care fee automatically renewed, the length of the term, that the fee automatically renewed at a higher price, and the higher price at which the fee would renew.

Requirements for Facet Prescription Products Disclosed Only After Purchase With No Automatic Refunds

77. During the purchase process for a prescription product, Facet noted a "virtual doctor consultation" was required. After purchase, the consumer was informed for the first time that they would need to upload photos of their skin and a photo ID. They were also prompted to "start consultation."

78. Upon clicking "start consultation," the consumer learned for the first time that the "virtual doctor consultation" was in fact an extensive 64-question medical intake form that asked for sensitive demographic, medical, and lifestyle information, including the consumer's race, gender identity, and whether the consumer has been diagnosed with behavior health conditions such as bipolar disorder or a history of suicidal thoughts.

Facet Assessment Flow

79. The Assessment Flow began with a few filtering questions (skin concern, state of residence, and date of birth) to determine if the consumer was eligible for Facet's skin-related services.

80. After clicking "Get Started" or "Start Consultation," the consumer was guided through the medical intake form, which was lengthy and requested sensitive information. At no point prior to starting the medical intake form was the consumer informed that submitting the form could cost as much as $99 or that receiving Facet prescription products also included an

ongoing care fee.

81. When the consumer finished answering the lengthy medical intake form, they were prompted to "submit my consultation" and—for the first time—informed of the existence of a consultation fee and the amount. Facet also did not disclose the existence of an ongoing care fee. On this screen, Facet informed the consumer that they would be required to upload photos of their areas of concern, but did not inform the consumer they would also need to upload a photo of their government-issued ID.

82. After submitting the medical intake form, the consumer was provided with options to pay with or without insurance and then directed to a checkout page to purchase the "consultation."

83. On the checkout page, the ongoing care fee appeared for the first time.

84. The discounted price of $0 for the ongoing care fee was presented in dark font, while a higher price was crossed out and in light gray font. Facet stated that the care fee was free for the first month but did not clearly and conspicuously state that the care fee was a required part of the automatically renewing subscription or automatically charged prescription refill program rather than an add-on that the consumer could cancel after trying it for a month, that the care fee automatically renewed, the length of the term, that the fee automatically renewed at a higher price, and the higher price at which the fee would renew.

85. After purchasing the consultation, the consumer was prompted to upload photos of the areas affected by their skin symptoms and—for the first time—informed they were also required to upload a photo of their government-issued ID.

86. If the consumer submitted the required information, a doctor reviewed the form and recommended a treatment plan, and the consumer was notified by email when their

treatment plan was ready.

87. Unlike Cove, Facet did not finalize the automatically renewing subscription or automatically charged prescription refill program until the consumer reviewed and accepted the medical provider's recommended treatment plan.

88. A consumer who logged into their account to accept their treatment plan was shown a screen similar to the checkout screen. Discounted prices for products were shown in dark, conspicuous font with higher prices in light gray font and crossed out. Facet did not explain that subsequent installments would be charged at the higher price.

Picnic

89. Picnic is a Thirty Madison brand that offered products for allergies until the brand was discontinued in June 2023. Picnic suffered from materially similar issues as those described above for Keeps. Some distinctions are noted below.

Picnic Material Terms

90. Since at least February 2021 until it was discontinued, Picnic engaged in drip pricing and did not clearly and conspicuously disclose the material terms in its online purchase flows **before** a customer committed to a purchase:

a. that its non-prescription subscription products automatically renewed

b. that its prescription products will automatically refill until they are not re-prescribed;

c. the terms of those purchases, including the length of the term, for how long a promotional price applied, or the higher price that applied after the promotion;

d. a $5 annual consultation fee;

e. that the consumer would be required to upload a photo of their ID; and

f. its cancellation policy and how to cancel.

Picnic Enrollment Flow

91. Picnic consumers were given the option of purchasing a one-month supply or a three-month supply. Nothing indicated that the products were offered on an automatic renewal or automatically charged refill basis. In fact, Picnic's own customer service training materials noted that "patients often request to cancel their Picnic account because they weren't aware they were auto subscribed."

92. On the checkout page, the product continued to be described as a one-month or three-month supply rather than an automatically renewing subscription or automatically charged prescription refill program. Underneath the conspicuous bright green button to "place order," Picnic stated, in fine print and buried among other text, that by making a purchase the consumer agreed to automatically renewing charges.

Requirements for Picnic Prescription Products Were Disclosed Only After Purchase With No Automatic Refunds

93. During the purchase process Picnic noted an "online medical consultation" was required for prescriptions. Once the consumer purchased their prescription product they were informed that they needed to complete a written medical intake form which would be followed by an Asynchronous Consultation.

94. Upon clicking "start consultation," the consumer was directed to a lengthy, 49-question medical intake form. This form asked for sensitive demographic, medical, and lifestyle information, including the consumer's race, gender identity, recreational drug use, and psychiatric illnesses diagnosis.

95. If the consumer completed the process, their form was reviewed. If the doctor recommended a different treatment plan for the consumer, the consumer was notified by email.

Picnic did not finalize the prescription product purchase until the consumer reviewed and accepted the doctor's recommended treatment plan.

96. The recommended treatment plan appeared in the consumer's online account. As in the other enrollment flows, the treatment plan was described as a one-month or three-month supply. There was no indication that the product automatically renewed or refilled and, if a discounted price was offered, that the consumer would be charged a higher price for subsequent installments.

<u>Evens</u>

97. Evens was a Thirty Madison brand that offered products for gastrointestinal issues until the brand was discontinued in August 2022. Evens suffered from materially similar issues as those described above for Keeps. Some distinctions are noted below.

Evens Material Terms

98. Since at least February 2021 until August 2022, Evens did not clearly and conspicuously disclose the material terms of its automatically renewing subscription or automatically charged prescription refill program, and engaged in drip pricing in its online purchase flows. In particular, Evens failed to clearly and conspicuously disclose, **before** a customer committed to a purchase:

a. which products were prescription products requiring a doctor consultation;

b. the doctor consultation fee upfront;

c. that non-prescription subscriptions automatically renewed;

d. that prescriptions automatically refilled unless they are not re-prescribed;

e. the terms of the purchase and how long promotional pricing applied;

f. that, in order to receive an already-purchased, non-refundable prescription product, the consumer was required to upload pictures of their government-issued ID; and

g. its cancellation policy or how to cancel.

Evens Enrollment Flow

99. In the enrollment flow, consumers choose their desired products from those offered by Evens. On the prescription product page, Evens indicated that the product required a "doctor consultation" in small, thin, light blue font. Evens did not disclose the associated annual $10 fee or explain that the doctor consultation was a lengthy medical intake form followed by an Asynchronous Consultation.

100. Evens did not clearly and conspicuously disclose that the recommended treatment plan was an automatically renewing product subscription or automatically charged prescription refill program, or that additional products would be charged at a higher price. Evens described the recommended treatment plan as a "3-month kit" in large, bold font. A promotional price was displayed in bright blue font, next to a higher price crossed out in black. A disclosure that the product kit cost "$80 quarterly after first quarter" was in small, italic, light gray font and inconspicuously located underneath the bright blue "order now" button.

101. On the checkout page, Evens included a disclosure that the product kit was "every 90 days" in small, light gray font. An additional disclosure was placed below the bright blue, conspicuous "place order" button in inconspicuous fine print. Evens did not disclose on the checkout page that the price of the kit would be higher for subsequent installments, and, if the recommended treatment plan included a prescription product, the consultation fee appeared on the checkout page for the first time.

Requirements for Evens Prescription Products Disclosed Only After Purchase With No Automatic Refunds

102. After purchase of a prescription product, the consumer was prompted to begin the medical intake form. This form asked for sensitive information, including medical history, and smoking, drinking, and drug habits. The consumer was also informed for the first time after purchase that they were required to upload a picture of a government-issued ID.

Nurx

103. Nurx is a Thirty Madison brand that offers, among other things, prescription products for reproductive and sexual health, skincare, hair care, and mental health. Thirty Madison acquired Nurx in 2022. Nurx suffered from materially similar issues as those described above for Keeps. Some distinctions are noted below.

Nurx Material Terms

104. Since at least April 2022, Nurx did not clearly and conspicuously disclose the material terms of its automatically renewing subscriptions and automatically charged prescription refill programs. Nurx also engaged in drip pricing in its online purchase flows. In particular, Nurx failed to clearly and conspicuously disclose:

a. a consultation fee and a recurring support fee (when applicable);

b. that the support fee was recurring; and

c. its cancellation policy or how to cancel.

105. Further, in certain enrollment flows, Nurx charged the consumer for and shipped products without the consumer's review or acceptance of the product price or frequency of the charges.

Nurx Enrollment Flow

106. All automatically renewing or refilling products followed the same general enrollment flow. Consumers created an account, completed a medical intake form, uploaded a picture of their government-issued ID (and, for certain products, pictures of the problem body area), were provided a recommended product, submitted shipping and payment information, and were provided an order summary on the last screen where the consumer could click to purchase. After purchase, a doctor reviewed the consumer's medical intake form and, if appropriate, prescribed a product, which Nurx then shipped or provided to the customer's preferred pharmacy.

107. Unlike the other Thirty Madison brands, Nurx's enrollment flow guided consumers through the medical intake form and requested photos **before** consumers purchased anything.

108. Nurx also enrolled the consumer in automatically charged prescription refill programs without the consumer's review or acceptance of the price or frequency of the charges. Specifically, at the end of the lengthy medical intake form for mental health treatment, at question 47, Nurx disclosed within a lengthy page of text titled "Our Follow-up Schedule" that consumers had to reject the recommended treatment plan within 48 hours "otherwise our medical provider will assume that you accept the treatment plan and will prescribe medication."

109. On the checkout page for a birth control prescriptions, if a consumer chose to pay with insurance, the price of the birth control was shown as "TBD" and a box to "avoid delays" was prechecked. "Avoid delays" was in bold text and followed by regular text that stated Nurx would charge the consumer's credit card for the out-of-pocket price if insurance did not cover the cost.

110. Thus, a consumer could be charged for the automatically charged prescription refill program without knowing its price or the frequency of the charges.

111. Indeed, many consumers reported that Nurx charged them for a product they did not approve or charged them a price they did not approve:

> *"NurX decided to charge me without confirmation….NurX does NOT show the pricing ANYWHERE until they ALREADY CHARGE you." (November 2023)*

> *"[T]hey switched my birth control to something completely different than what I paid for and tried to charge me $60 for it." (August 2023)*

> *"I provided my insurance information and a credit card for co-pay, and checked a box that said to not charge my card if my insurance declines to pay. Well, my insurance declined to pay for one medication….[W]ithout any notice, I was charged $180! I was only notified of the charge after the fact, and since the order had already shipped the customer service could not do anything." (October 2022)*

> *"They say I can message their medical provider, but for 5 days I got zero response and they charged my credit card for a prescription medication I didn't want, without my permission." (May 2022)*

> *"I received [a] message that they had charged my card $94….The charge was made for another medication that I did not request or even approve of….I was not asked if I wanted to pay out of pocket before I was charged…." (April 2022)*

> *"I originally was looking into their products and was trying to get more info on whether it would be covered by insurance or not. Request for info was submitted but I did not proceed with anything further since they were going to charge me full price. They ended up charging my card and shipping the product out the next day without my consent." (March 2022)*

> *"I thought this would be a good and easy way to get birth control …. Before they even told me that my insurance wouldn't cover it and if I wanted to continue they already charged my bank account." (February 2022)*

> *"I requested a prescription for birth control and despite having uploaded my insurance information they charged my credit card." (November 2021)*

> *"Nurx charged me for medication before I gave approval and gave no chance to inquire about the cost of the medication or ask about the treatment plan." (September 2021)*

Nurx Cancellation Procedures

112. The only place Nurx informed consumers how to cancel was on the FAQ page of its website. This information was not easy for consumers to find.

113. Nurx's FAQ page did not offer a "cancellation" category. Consumers were required to click on different categories to search for the cancellation information.

114. Cancellation information was located in a "About Nurx" Consumers who scrolled down a long list of "About Nurx" subcategories and questions to the third subcategory, "Account Information" could click on "how do I cancel an order."

115. This opened a dialogue tree that required consumers to identify the service they receive through Nurx, provide a cancellation reason, and, in some cases, navigate a win back offer.

116. Only after navigating the dialog tree were consumers provided any information on how to cancel. Even then, not all branches of the dialogue tree actually provided cancellation information. Some ended with options only to delay or cancel a specific **order**, some ended with a suggestion to consider alternate Nurx products, and some directed the user to message Nurx's medical or customer service team.

117. Even where Nurx did provide information on how to cancel, Nurx did not advise consumers that they could also call to cancel.

118. Consumers still were not finished with the cancellation process after searching Nurx's website for information on how to cancel, navigating the dialogue tree, and sending a direct message to Nurx's customer service team.

119. In response to the customer's request to cancel, Nurx customer service agents attempted to obtain a cancellation reason and win back the customer as described above for

Keeps.

120. From April 2022 through January 2023, Nurx's average time to process a consumer's cancellation request was more than 21 days.

121. According to some consumers, Nurx continued to charge for and ship products even after consumers submitted their initial cancellation request.

122. Starting December 22, 2022, Nurx has allowed New York consumers to cancel through their online accounts without engaging with a customer service agent. However, Nurx does not inform consumers of this cancellation method: not in the enrollment flow, the acknowledgment email, or anywhere in the dialog tree.

123. Since at least April 2022, frustrated consumers have complained to the FTC and BBB about how difficult it is to get in touch with Nurx, how difficult it is to cancel a Nurx automatically renewing subscription or automatically charged prescription refill program, and continuing to be charged after making a cancellation request:

> *"I signed up with service with [N]urx. They charged me 65 in August. I then canceled on August 18. Then on September 16 was charged 55 again. I just want my money back as I canceled." (September 2023)*
>
> *"This company is not responding to my requests to cancel and they have no means in which I can cancel my order online or via phone. This is a deliberate attempt to keep me trapped in this payment subscription." (August 2023)*
>
> *"This company makes it virtually impossible to cancel a subscription. They don't answer messages or emails regarding it nor can you get someone in the phone…. There is no way to cancel it through the app or website nor can you remove your payment method from the account. I sat on hold for over an hour … before the call hung up on their end….At this point I want to delete my account but there's no way to do that through the website or the app either." (July 2023)*
>
> *"[R]ecently I have decided that I would like to cancel my subscription and close my account. I reached out multiple times… through their messaging services, and nobody has responded. I also called (within their hours) and nobody is picking up….I cannot even take my card off file, cancel the subscription, or delete my account by myself!" (March 2023)*

"I have repeatedly asked to cancel my account and no longer be charged. They do not have an unsubscribe button within the user's account and you['re] at their mercy for cancellation. I've had to pay for several months since requesting a cancellation…." (October 2022)

"The business model for NURX seems to be baiting customers and once you have a subscription, making it impossible for you to cancel the prescription and subscription service. You have to dig through their website to find any information how to cancel, which is to speak their customer service via live chat or call their…number, neither of which you can actually reach someone. Also, they require an explanation for why you are canceling and if you click certain options it doesn't give you options for how to cancel." (September 2022)

"Nurx does not let you cancel orders or subscriptions. There are no options other than chat support which does not respond. I've been charged hundreds of dollars for medication I do not want. They have an FAQ called how to cancel but it does not have any option to actually cancel." (June 2022)

"I got a consultation for birth control and then realized my insurance and provider covers better through another service. I've tried email and messaging through the app to cancel my order and nothing has been done." (May 2022)

Respondent's Violations

124. New York General Business Law ("GBL") Article 22-A prohibits deceptive acts or practices and false advertising in the conduct of any business, trade or commerce in this State. GBL §§ 349, 350.

125. The OAG finds that the practices described above constitute repeated violations of law, including but not limited to, GBL §§ 349 and 350.

126. Thirty Madison neither admits nor denies the OAG's Findings in paragraphs 1-125.

127. This Assurance is not intended for use by any third party in any other proceeding. This Assurance is not intended, and should not be construed, as an admission of liability by Thirty Madison.

128. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding and to discontinue its investigation.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

RELIEF

129. For the purposes of this Assurance, the following definitions apply:

a. “Automatically charged prescription refill program” shall mean plan or arrangement in which a prescription will automatically refill until it is not re-prescribed.

b. “Automatic renewal” shall mean a plan or arrangement in which a paid subscription or purchasing agreement is automatically renewed at the end of a definite term for a subsequent term. A paid subscription or purchasing agreement automatically renews if Respondent charges a consumer for a subsequent term at the end of a definite term, regardless of whether the consumer receives the product or service for which they are charged. Cancellation of an Automatic Renewal may occur by active or passive events.

c. “Cancellation mechanism(s)” shall refer to all methods by which Respondent allows a consumer to terminate their Subscription or Automatically Charged Prescription Refill Program and avoid future charges.

d. “Clear(ly) and conspicuous(ly)” or “clearly, conspicuously” shall mean in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks, in a manner that clearly calls attention to the language.

e. “Consumer” shall mean any individual who seeks or acquires, by purchase or lease, any goods, services, money, or credit for personal, family, or household purposes.

f. “Continuous service” shall mean a plan or arrangement in which a subscription or purchasing agreement continues until the consumer cancels the service. A subscription or purchasing agreement continues for as long as Respondent continues to charge the consumer, regardless of whether the consumer receives the product or service for which they are charged.

g. “Enrollment flow” shall mean any process by which a consumer signs up for or purchases a product or service, regardless of whether additional steps are needed to complete the purchase.

h. “Subscription” shall mean any non-prescription goods, services, or benefits offered to consumers on an automatic renewal or continuous service basis.

General Compliance

130. Respondent shall comply with GBL §§ 349 and 350 in connection with its marketing, sales, and cancellations of Subscriptions or Automatically Charged Prescription Refill Programs.

131. Within four (4) months of the Effective Date of this Assurance (except as otherwise noted), Respondent shall comply with the provisions of this Assurance.

Sign-Up Procedures & Acknowledgment

132. Respondent shall clearly, conspicuously, and accurately disclose the following material terms of a Subscription or Automatically Charged Prescription Refill Program on the first page of the enrollment flow in visual proximity to the request for consent to the offer:

a. the offered price;
b. the time period during which the offered price applies;
c. the price that will be charged after any promotional period ends;
d. that the Subscription automatically renews or the Automatically Charged Prescription Refill Program automatically charges upon refill;
e. the frequency of the events in (d) above;
f. the minimum purchase obligation, if any;
g. any charges that are nonrefundable;
h. that customers may be asked to provide personal and/or medical information in order to finalize their prescriptions; and
i. all material terms of the cancellation policy that applies to the offer, including each deadline by which the Consumer must act to

avoid charges. Details about each valid method of cancellation accepted by Respondents shall be provided either on the same page or via link to a FAQ.

133. Respondent shall obtain the consumer's informed, affirmative consent to the terms listed in paragraph 132 prior to charging the consumer. Respondent shall also obtain such informed, affirmative consent to the negative option feature in a clear and conspicuous manner that highlights the choice requested without the use of language or design that interferes with, detracts from, obscures, or otherwise undermines the ability to understand and consent to the negative option feature, such as requesting such consent separately from any other portion of the entire transaction.

134. Respondent shall not describe the review of a medical intake form, or any similar product or service that does not involve a consumer's synchronous interaction with another individual, as a "consultation" or any similarly confusing term; provided that such review may be described as an "asynchronous consultation."

135. Respondent shall present the full term price of any commitment that the Consumer is entering into by accepting the purchase. However, Respondent may advertise a lower fractional price alongside the full term price.

136. Respondent shall either (i) clearly and conspicuously, and accurately, disclose the following before obtaining the consumer's billing information, or (ii) cancel and refund such Subscription or Automatically Charged Prescription Refill Program if a consumer has not taken such steps or provided such information within ten business days:

a. a description of any action required of the consumer to finalize the Subscription or Automatically Charged Prescription Refill Program, including, but not limited to, the need to provide images or videos of their body, provide images of their government issued ID, or complete a medical intake form;

b. a description of any sensitive medical information that must be provided by the consumer including, but not limited to, alcohol consumption, drug use, psychiatric illness diagnosis, depression symptoms, history of suicide attempts, and body parts that will be photographed or recorded.

137. If, as part of a Subscription or Automatically Charged Prescription Refill Program, Respondent will ship a product that has not been specifically requested by the consumer, then Respondent shall obtain the consumer's informed, affirmative consent to receive that new product before shipping it to the consumer. For the avoidance of doubt, this does not necessarily constitute a second, separate requirement of consent on top of any other consent requirements in this Assurance.

138. Within 24 hours of a consumer's purchase of a Subscription or Automatically Charged Prescription Refill Program, Respondent shall provide, in a manner that is capable of being retained by the consumer, an acknowledgment that includes, clearly and conspicuously, the disclosures listed in paragraph 132, and, for each cancellation mechanism, all other information a consumer needs to timely and effectively cancel their Subscription or Automatically Charged Prescription Refill Program, if any. If the offer includes a free gift or trial, Respondent shall allow the consumer to cancel before the consumer pays for the goods or services and disclose in the acknowledgment how to cancel before being charged.

139. The terms of this Assurance apply with equal force to any product or service that is recommended and/or provided by Respondent after a consumer makes a purchase and to any

other material change to a consumer's Subscription or Automatically Charged Prescription Refill Program.

Cancellation Procedures

140. Respondent shall provide an online mechanism for cancellation that is simple, cost-effective, timely, and easy-to-use. The mechanism shall be available to consumers over the same website or app the consumer used to initiate the Subscription or Automatically Charged Prescription Refill Program.

141. Respondent shall not erect unreasonable barriers to cancellation or impede the effective operation of its stated cancellation procedures. Respondent shall timely honor valid cancellation requests and promptly provide refunds for charges incorrectly imposed after a valid cancellation request, without requiring action on the part of the consumer.

142. In particular, Respondent shall modify its online cancellation procedures as follows and make such process available to all consumers:

a. Respondent shall include a "cancel" option under the "Subscriptions" and "Prescriptions" section (or equivalent sections) of a consumer's online account. The "cancel" option shall be displayed clearly and conspicuously and shall effectuate cancellations within the online account, without directing consumers to another webpage or transitioning the cancellation process to another medium (*e.g.* email).

b. Respondent shall enable cancellation through an online account in one click, except that Respondent may ask the consumer if they would like to receive a win back offer.

c. Respondent shall process cancellation requests promptly upon receipt, without requiring further action on the part of the consumer or requiring receipt of a cancellation confirmation email. Any follow-up communications shall clearly and conspicuously inform the consumer that their cancellation has been processed.

d. The effective date of a consumer's cancellation shall be the date the consumer submits their cancellation through their online account or makes a cancellation request through another cancellation mechanism.

e. Respondent shall automatically refund with 10 business days of any refund request any charges imposed after a consumer's timely cancellation request.

143. Promptly after a consumer cancels their Subscription or Automatically Charged Prescription Refill Program, Respondent shall provide a cancellation confirmation to the consumer that includes the date the consumer canceled and the date that the consumer's Subscription or Automatically Charged Prescription Refill Program will end in a manner that is capable of being retained by the consumer. Respondent shall allow consumers to remove all payment information at any time, whether deleting information held by Respondent or revoking permission to use payment information held by a third party.

OAG ACCESS TO RECORDS

144. Respondent shall retain for at least six years all documents required to demonstrate compliance with this Assurance, including but not limited to subscriber data and all versions of enrollment and cancellation flow. Such documents shall be made available to the

OAG within fourteen (14) days of a written request from the OAG. For avoidance of doubt, this paragraph does not require Respondent to provide the OAG with copies of any draft documents, draft reports, or communications that would otherwise be protected as attorney work product or under the attorney-client privilege.

MONETARY RELIEF

145. Respondent shall pay to the State of New York $400,000 within 45 days of the Effective Date. Payments shall be made by wire transfer in accordance with instructions provided by an OAG representative and shall reference Assurance No. 26-028.

146. Thirty Madison shall make restitution to the following classes of Thirty Madison consumers (the "Restitution Classes"). Consumers who meet the applicable criteria for more than one Restitution Class shall receive full restitution as a member of each Class to which they belong, provided that no Consumer may receive multiple refunds for the same charge. Consumers who meet the criteria for any of the Restitution Classes and have already received a refund in an amount equal to or greater than the amounts they would be entitled to as part of those Restitution Class(es) shall be excluded from those Restitution Class(es). If any Consumer entitled to restitution is currently an active subscriber for any Thirty Madison product or service, Respondent may grant them an account credit in the restitution amount rather than issuing a refund. New York consumers who, between February 9, 2021 and the effective date of this AOD:

a. Requested cancellation of a Subscription through any contact method at least 24 hours prior to any renewal or charge date; such consumers shall receive as restitution a refund of all amounts charged after their cancellation request.

b. Requested cancellation of an Automatically Charged Prescription Refill Program through any contact method at least 24 hours prior to any renewal or charge date; such consumers shall receive as restitution a refund of all amounts charged after their cancellation request.

c. Purchased an Automatically Charged Prescription Refill Program, and were charged after their prescription expired and had not renewed their prescription; such consumers shall receive as restitution a refund of all charges incurred after their prescription expired.

d. Were charged for a Thirty Madison product without having confirmed or accepted the specific product, received their first product shipment, and who cancelled their order for that product before receiving their next shipment; such consumers shall receive as restitution a refund of all charges related to such shipments.

e. Did not complete steps required to finalize a purchase, and did not receive products or services; such consumers shall receive as restitution a refund of their initial product order and any fees.

f. Made an initial purchase but were deemed not a match or otherwise were ineligible for Thirty Madison's products or services; such consumers shall receive as restitution a refund of their initial order and any fees.

g. Purchased a product or service from Thirty Madison, and were charged a support fee, and who cancelled their Subscription or Automatically Charged Prescription Refill Program after being charged such fee for the first time after their initial purchase; such consumers shall receive as restitution a refund of such support fee.

h. Consumers who purchased products, did not uncheck the "avoid delays" checkbox, and were charged the out-of-pocket price for their product(s); such consumers shall receive as restitution a refund of all out-of-pocket charges above $15.

147. The restitution payments shall be issued within 120 days of the Effective Date (the "Restitution Deadline"). To effectuate the restitution payments, Thirty Madison shall (a) refund consumers electronically, transmitting the full amount by effectuating a reverse charge on the consumer's payment card and (b) for payments that are successful, Thirty Madison will then send a notice to the consumer's email (on the same day) and last known address on file with Thirty Madison (within two weeks) alerting the consumer to the successful payment. If Thirty Madison is unable to refund a consumer electronically, then it shall (a) send a notice to the consumer's email and last known address on file with Thirty Madison alerting them that Thirty Madison will send a refund via hardcopy check in 21 days, mailed to the consumer's last address on file with Thirty Madison (via first-class mail, postage prepaid, address correction service requested with forwarding and return postage guaranteed), with instructions for the consumer to submit updated address information if needed, and that any uncashed checks will be voided on the six-month anniversary of their issuance; and (b) after 21 days, refund consumers via hardcopy check, mailed to each consumer's last known address on file or updated address if

otherwise provided, together with a notice that any uncashed checks will be voided on the six-month anniversary of their issuance.

148. All notices sent pursuant to the foregoing paragraph 147 shall explain the reason for the payment, including that such payment is restitution pursuant to this Assurance. Thirty Madison shall inform the OAG about when it plans to send such notices and provide the OAG with a copy of planned notices for the OAG's review and approval at least ten days prior to transmission. All hard-copy notices shall be sent via first-class mail, postage prepaid, address correction service requested with forwarding and return postage guaranteed. If a hardcopy mailing is returned undeliverable, then Thirty Madison must use standard address search methodologies such as re-checking Thirty Madison's records and the Postal Service's National Change of Address database, and re-mail to any corrected and/or updated address within thirty (30) days.

149. Within thirty days of the Restitution Deadline, Thirty Madison shall provide the OAG an accounting of all restitution payments issued in accordance with this Assurance. In the event that Thirty Madison has issued restitution payments totaling less than $500,000 by 120 days after the Restitution Deadline, then Respondent shall pay by wire transfer to the State of New York, within 30 days of the Restitution Deadline, the sum of $500,000 minus the total amount of restitution payments that Respondent issued pursuant to this Assurance; such funds shall be retained by the OAG or, at the OAG's discretion, be distributed as additional restitution. Concurrent with this payment, Thirty Madison shall provide an updated accounting of restitution payments issued.

150. In the event that any restitution payments remain unpaid or uncashed on the six-month anniversary of the Restitution Deadline, Thirty Madison shall, within 20 days, pay by

wire transfer to the State of New York the value of the unpaid or uncashed restitution payments, and such funds shall be retained by the OAG or, at the OAG's discretion, be distributed as additional restitution. Thirty Madison shall provide to the OAG an accounting of the unpaid and uncashed restitution payments which shall include the contact information Thirty Madison used to reach the consumers entitled to the restitution payments, the manner in which the payment was issued, and the reason the payment was not completed (*e.g.*, check returned or check not cashed).

151. Any payments and all correspondence related to this Assurance must reference Assurance No. 26-028.

MISCELLANEOUS

152. Respondent expressly agrees and acknowledges that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 158, and agrees and acknowledges that in such event:

a. any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;

b. the OAG may use statements, documents or other materials produced or provided by the Respondent prior to or after the effective date of this Assurance, subject to any applicable work product or attorney-client privilege;

c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondent irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue; and

d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

153. If a court of competent jurisdiction determines that the Respondent has violated the Assurance, the Respondent shall pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

154. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Respondent. Respondent shall include in any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG, except where such assignment, delegation, or transfer is part of a merger, acquisition, bankruptcy, or other transaction in which a third party assumes control of all of the Respondent's assets or a part thereof.

155. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

156. Any failure by the OAG to insist upon the strict performance by Respondent of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by the Respondent.

157. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 26-028, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to the Respondent, to:

Thirty Madison, Inc.
Attn: Legal Department
480 Morris Ave.
Summit, NJ 07901

With a copy to:
Hueston Hennigan LLP
Attn: Moez M. Kaba
1 Little W 12th Street
Floor 2
New York, NY 10014

If to the OAG, to:

New York State Office of the Attorney General
Bureau of Internet and Technology
Attn: Bureau Chief
28 Liberty Street
New York, NY 10005

158. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by the Respondent and their counsel and the OAG's own factual investigation as set forth in Findings, paragraphs 1-125 above. The Respondent represents and warrants that neither it nor its counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by Respondent or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

159. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the Respondent in agreeing to this Assurance.

160. The Respondent represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved. Respondent further represents and warrants that Haris Memon, as the signatory to this Assurance, is a duly authorized officer acting at the direction of the Board of Directors of Thirty Madison.

161. Respondent shall not make or permit to be made any public statement denying, directly or indirectly, the propriety of this Assurance or the OAG investigation. Nothing in this paragraph affects Respondent's (i) testimonial obligations or (ii) right to take positions in defense of litigation or other legal proceedings to which the OAG is not a party. This Assurance is not intended for use by any third party in any other proceeding.

162. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that the Respondent violates the Assurance after its effective date.

163. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

164. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

165. Respondent acknowledges that they have entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

166. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

167. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

168. This Assurance may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

169. The effective date of this Assurance is the date the OAG signs the Assurance.

LETITIA JAMES
ATTORNEY GENERAL OF THE
STATE OF NEW YORK

Gena Feist

By: Gena Feist
Assistant Attorney General
Bureau of Internet and Technology
Office of the New York State
Attorney General
28 Liberty St.
New York, NY 10005

8/17/26

Date

THIRTY MADISON, INC.

Signed by:
Haris Memon
B005A78BFAD7451...

By: Haris Memon
CEO
480 Morris Ave.
Summit, NJ 07901

8/6/2026

Date