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7 **STATE OF WASHINGTON**  
8 **WHATCOM COUNTY SUPERIOR COURT**

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10 STATE OF WASHINGTON,  
11 Plaintiff,  
12 v.  
13 PEACEHEALTH  
14 Defendant.  
15

NO.  
CONSENT DECREE

16 **I. JUDGMENT SUMMARY**

17 1.1 Judgment Creditor State of Washington  
18 1.2 Judgment Debtors PeaceHealth  
19 1.3 Principal Judgment Amount \$2,000,000, plus restitution  
20 pursuant to Section IV below  
21 1.4 Post Judgment Interest Rate: 12% percent per annum, except as  
22 provided below  
23 1.5 Attorneys for Judgment Creditor: Audrey Udashen, Will O'Connor,  
Assistant Attorneys General  
24 1.6 Attorneys for Judgment Debtor: Brad Fisher, Miriam Swedlow  
Davis Wright Tremaine  
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1.7 The State of Washington (“the State”), appears by and through its attorneys, Robert Ferguson, Attorney General, and Audrey Udashen and Will O’Connor, Assistant Attorneys General; and

1.8 PeaceHealth appears by and through its attorneys, Brad Fisher and Miriam Swedlow of Davis Wright Tremaine; and

1.9 In lieu of litigation, the State and PeaceHealth (together, the “Parties”) have agreed to resolve the State’s allegations by the entry of this Consent Decree; and

1.10 PeaceHealth, by entering into this Consent Decree, does not admit the State's allegations other than those solely as necessary to establish the jurisdiction of this Court; and

1.11 The State and PeaceHealth agree this Consent Decree does not constitute evidence or an admission regarding the existence or non-existence of any issue, fact, or violation of any law alleged by the State; and

1.12 PeaceHealth recognizes and states this Consent Decree is entered into voluntarily and that no promises, representations, or threats have been made by the Attorney General's Office or any member, officer, agent, or representative thereof to induce them to enter into this Consent Decree, except for the promises and representations provided herein; and

1.13 PeaceHealth waives any right it may have to appeal from this Consent Decree or to otherwise contest the validity of this Consent Decree; and

1.14 PeaceHealth further agrees this Court shall retain jurisdiction of this action and jurisdiction over PeaceHealth for the purpose of implementing and enforcing the terms and conditions of this Consent Decree and for all other purposes related to this matter; and

The Court, finding no just reason for delay;

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

## II. GENERAL

2.1 This Court has jurisdiction of the subject matter of this action and of the Parties.

2.2 This Consent Decree or the fact of its entry does not constitute evidence or an admission by any party regarding the existence or non-existence of any issue, fact, or violation of any law alleged by the State.

2.3 This Consent Decree fully and finally resolves and forever discharges and releases all claims and causes of action that the State has raised or may in the future raise against PeaceHealth relating to its alleged failure to conduct initial determinations of sponsorship status in compliance with the requirements of RCW 70.170.060(10) and associated regulations; PeaceHealth's use of tools to predict the income of patients; PeaceHealth's alleged failure to disclose to patients when it received an indication that they were likely or presumptively charity care eligible and subsequent collection from these patients; and, its failure to inform patients when it granted them charity care through the use of a presumptive charity care tool, except that PeaceHealth's failure to comply with this Consent Decree shall permit the State to take such further action against PeaceHealth as provided for herein.

2.4 As used in this Consent Decree, the term patient shall mean the actual patient receiving hospital care or the “responsible party” for that care. “Responsible party” shall mean the individual who is responsible for the payment of any hospital charges which are not subject to third-party sponsorship.

### III. INJUNCTION

3.1 The injunctive provisions of this Consent Decree shall apply to PeaceHealth and to its successors, employees, assigns, contractors, representatives, and all others acting in concert or active participation with PeaceHealth, with respect to each PeaceHealth “hospital” located in Washington state as that term is defined under RCW 70.41.020(8) and “appropriate hospital-based medical services” as that term is defined in WAC 246-453-010(7).<sup>1</sup>

<sup>1</sup> The form and scope of this language, as used throughout this document, is intended to have the same form, scope, and application as subsection (d) of Washington Court Rule 65.

1           3.2     Within 30 days following the entry of this Consent Decree, PeaceHealth shall  
2 inform all persons acting in concert or active participation with PeaceHealth with respect to the  
3 terms and conditions of this Consent Decree and shall direct those persons and entities to comply  
4 with this Consent Decree.

5           3.3     For five years from the date of entry of this Consent Decree, PeaceHealth shall  
6 maintain policies and procedures to ensure that it reasonably complies with the following  
7 requirements:

8                 3.3.1   PeaceHealth shall provide notice to patients about the availability of free  
9 or discounted care through PeaceHealth's financial assistance program, and shall offer to provide  
10 materials about PeaceHealth's financial assistance program, including the financial assistance  
11 application.

12                3.3.2   PeaceHealth shall not ask patients to make payment for appropriate  
13 hospital-based services unless (a) PeaceHealth has made an initial determination of eligibility  
14 for financial assistance based on the patient's income as a percentage of the Federal Poverty  
15 Level (FPL) as determined by the patient's stated household size and income (hereinafter  
16 referred to as an "initial screen"), or (b) the patient has declined or failed to cooperate with  
17 PeaceHealth to allow an initial screen or to complete a financial assistance application.

18                3.3.3   PeaceHealth shall enact policies and procedures to offer an initial screen  
19 to each patient with whom it has a direct encounter, whether in person or over the phone. If  
20 there is a direct patient encounter, and the patient is medically able to participate, PeaceHealth  
21 shall offer an initial screen at that time; if there is not a direct patient encounter, or the patient is  
22 not medically able to participate or an initial screen is not practical under the circumstances,  
23 PeaceHealth will mail the patient a letter explaining the availability of financial assistance with  
24 instructions for how to apply online, as well as an application. Failure to respond to the letter  
25 within fourteen (14) days shall be deemed non-cooperation sufficient to permit PeaceHealth to  
26 proceed with billing, with an application and instructions included in every statement.

1                   3.3.3.1 PeaceHealth shall not be required to offer an initial screen if the  
2 patient's account has a pending financial assistance application or an approved financial  
3 assistance application within the last six (6) months, or the patient's account indicates an initial  
4 screen has been performed within the last six (6) months.

5                   3.3.3.2 If the initial screen indicates the patient likely qualifies for  
6 financial assistance, PeaceHealth will inform the patient that the screen indicates the patient  
7 likely qualifies for financial assistance and provide them with directions on how to apply for  
8 financial assistance. PeaceHealth will also mail the patient written notice of the initial  
9 determination along with a financial assistance application, with instruction that a completed  
10 financial assistance application must be completed within fourteen (14) days to prevent  
11 collection efforts directed to the patient. If an application is not received, PeaceHealth may  
12 commence collection efforts fourteen (14) days after the date of the screen.

13                  3.3.3.3 If the initial screen indicates the patient likely does not qualify  
14 for financial assistance, PeaceHealth will inform the patient that the screen indicates the patient  
15 likely does not qualify for financial assistance. PeaceHealth will also advise the patient of the  
16 option to submit a financial assistance application for a more thorough review and determination  
17 of the patient's eligibility for financial assistance. PeaceHealth will mail the patient written  
18 notice of the initial determination and information about PeaceHealth's financial assistance  
19 program. Except under the circumstances in paragraph 3.3.3.4, PeaceHealth may proceed with  
20 collection efforts.

21                  3.3.3.4 If the initial screen indicates the patient likely does not qualify  
22 for financial assistance and the patient indicates interest in applying for financial assistance,  
23 PeaceHealth will mail the patient a financial assistance application along with the written notice  
24 of the initial determination. PeaceHealth will inform the patient that a completed financial  
25 assistance application must be completed within fourteen (14) days to prevent collection efforts  
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1 directed to the patient. If an application is not received, PeaceHealth may commence collection  
2 efforts fourteen (14) days after the date of the screen.

3 3.3.4 If the patient declines or fails to cooperate in the screening process but  
4 indicates interest in applying for financial assistance, PeaceHealth will mail the patient a letter  
5 with information about its financial assistance program and a financial assistance application,  
6 with instruction that a completed financial assistance application must be completed within  
7 fourteen (14) days to prevent collection efforts directed to the patient.

8 3.3.5 For the sake of clarity, if a patient declines or refuses to cooperate in an  
9 initial screen without an indication of an intent to submit a financial assistance application,  
10 PeaceHealth may immediately begin collection efforts.

11 3.3.6 Once PeaceHealth receives a financial assistance application, the process  
12 will follow PeaceHealth's existing financial assistance process for review and financial  
13 assistance award determination.

14 3.4 For the sake of clarity, so long as such tools are used to grant (rather than deny)  
15 charity to persons who have not submitted an application or otherwise cooperated in the  
16 screening process described here, PeaceHealth shall be entitled to use predictive tools as it sees  
17 fit in its sole discretion.

#### 18 **IV. RESTITUTION**

19 4.1 Pursuant to RCW 19.86.080, PeaceHealth will take the following steps to make  
20 restitution to its patients.

21 4.2 Within sixty (60) days of the entry of this Consent Decree, PeaceHealth shall  
22 refund patient payments made after January 1, 2018 by an agreed list of patients the PARO tool  
23 identified as likely to have income at or below 200% of the Federal Poverty Level either at the  
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1 time of the transmission of a first or last bill to the patient.<sup>2</sup> Patient refunds will include a one-  
2 time, non-compounded 12% simple interest payment.

3 4.2.1 Such refund shall be made by check, payable to the patient.

4 4.3 Within sixty (60) days of the entry of this Consent Decree, PeaceHealth shall mail  
5 a notice to an agreed list of patients (i) identified by the PARO tool as likely to qualify for  
6 financial assistance prior to making payment and (ii) who made any payments to PeaceHealth  
7 on or after January 1, 2018 that will not be refunded pursuant to 4.2. This notice shall include a  
8 simple form for patients to complete to attest that their income qualified them for financial  
9 assistance at the time of their care<sup>3</sup>

10 4.3.1 If patients return the attestation form referenced above to indicate  
11 eligibility for financial assistance at the time of their care, PeaceHealth shall issue a refund equal  
12 to all amounts paid to PeaceHealth by the patient after the patient was identified as likely to  
13 qualify for financial assistance, plus a one-time, non-compounded 12% simple interest payment.  
14 Such refund shall be made by check, payable to each patient at the address they include in the  
15 completed attestation form.

16 4.4 If any check issued pursuant to 4.2 is returned to sender, or is not cashed before  
17 it becomes invalid or expired, an amount equal to the check will be sent to the Washington State  
18 Department of Revenue according to its usual protocol for the disposition of unclaimed property.

19 4.5 Within six (6) months of the entry of the Consent Decree, PeaceHealth will send  
20 the State a report identifying the amount of restitution it provided pursuant to 4.2 and 4.3.

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24 <sup>2</sup> The agreed list of patients shall be the list in the spreadsheet attached to the email exchange of counsel  
for the parties on November 6, 2023.

25 <sup>3</sup> The agreed list of patients shall be the list in the spreadsheet attached to the email exchange of counsel  
26 for the parties on November 6, 2023.

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5.2 Payment owing under this provision shall be in the form of a valid check paid to the order of the “Attorney General—State of Washington” and shall be due and owing within thirty (30) days of the entry of the Consent Decree. Payment shall be sent to the Office of the Attorney General, Attention: Margaret Farmer, Litigation Support Manager, 800 Fifth Avenue, Suite 2000, Seattle, Washington 98104-3188.

## VI. ENFORCEMENT

6.2 If PeaceHealth violates a condition of this Consent Decree, the State may seek the imposition of additional conditions, civil penalties of up to \$125,000 per violation pursuant to RCW 19.86.140, restitution, injunctive relief, attorney's fees, costs, and such other remedies as the Court may deem appropriate at an evidentiary hearing in which PeaceHealth has an opportunity to be heard

6.3 Jurisdiction is retained by this Court for the purpose of enabling any party to this Consent Decree to apply to the Court, to the extent permitted herein, for enforcement of



1 compliance with this Consent Decree, to punish violations thereof, or otherwise address the  
2 provisions of this Consent Decree.

3         6.4     Nothing in this Consent Decree shall grant any third-party beneficiary or other  
4 rights to any person who is not a party to this Consent Decree.

5         6.5     Nothing in this Consent Decree shall be construed to limit or bar any other  
6 governmental entity or person from pursuing other available remedies against PeaceHealth or  
7 any other person.

8         6.6     Under no circumstances shall this Consent Decree, or the name of the State of  
9 Washington, this Court, the Office of the Attorney General, the Consumer Protection Division,  
10 or any of its employees or representatives be used by PeaceHealth or any of its respective owners,  
11 members, directors, successors, assigns, transferees, officers, agents, servants, employees,  
12 representatives, and all other persons or entities in active concert or participation with  
13 PeaceHealth, in connection with any selling, advertising, or promotion of products or services,  
14 or as an endorsement or approval of PeaceHealth's acts, practices, or conduct of business.

15         6.7     The State shall be permitted, upon advance written notice of twenty (20) days to  
16 Defendant, to access, inspect, and/or copy business records or documents in possession, custody,  
17 or under control of Defendant to monitor compliance with this Consent Decree, provided that  
18 the inspection and copying shall avoid unreasonable disruption of Defendant's business  
19 activities.

20         6.8     To monitor compliance with this Consent Decree, the State shall be permitted to  
21 serve interrogatories pursuant to the provisions of CR 26 and CR 33 and to question Defendant  
22 or any officer, director, agent, or employee of Defendant by deposition pursuant to the provisions  
23 of CR 26 and CR 30 provided that the State attempts in good faith to schedule the deposition at  
24 a time convenient for the deponent and his or her legal counsel.

25         6.9     This Consent Decree in no way limits the State from conducting any lawful non-  
26 public investigation to monitor PeaceHealth's compliance with this Consent Decree or to

1 investigate other alleged violations of the CPA, which may include, but is not limited to,  
2 interviewing customers or former employees of PeaceHealth.

3         6.10 This Consent Decree shall be binding upon and inure to the benefit of  
4 PeaceHealth's successors and assigns. PeaceHealth and its successors and assigns shall notify  
5 the Attorney General's Office at least thirty (30) days prior to any change-in-control of  
6 PeaceHealth that would change the identity of the corporate entity responsible for compliance  
7 obligations arising under this Consent Decree, including, but not limited to, dissolution,  
8 assignment, sale, merger, or other action that would result in the emergence of a successor  
9 corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any  
10 acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change  
11 in the corporate name or address. Provided, however, that with respect to any proposed change  
12 in the corporation about which PeaceHealth and its successors and assigns learn less than thirty  
13 (30) days prior to the date such action is to take place, PeaceHealth and its successors and assigns  
14 shall notify the Attorney General's Office as soon as is practicable after obtaining such  
15 knowledge.

16         6.11 Any notice or other communication required or permitted under this Consent  
17 Decree shall be in writing and delivered to the following persons or any person subsequently  
18 designated by the parties:

19                 For the State of Washington:  
20                 Office of the Attorney General  
21                 Consumer Protection Division  
22                 Attention: Audrey Udashen, AAG  
23                 800 Fifth Avenue, Suite 2000  
24                 Seattle, WA 98104

For PeaceHealth:  
                  Brad Fisher  
                  Davis Wright Tremaine  
                  920 Fifth Avenue, Suite 3300  
                  Seattle, WA 98104

25         6.12 The Clerk of the Court is ordered to immediately enter the foregoing Judgment  
26 and Consent Decree.

1 DONE IN OPEN COURT this \_\_\_\_ day of \_\_\_\_\_  
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4 \_\_\_\_\_  
JUDGE/COURT COMMISSIONER

5 Presented by:

6 ROBERT W. FERGUSON  
7 Attorney General

8  
9 /s Audrey Udashen  
AUDREY UDASHEN, WSBA #42868  
10 WILL O'CONNOR, WSBA #52441  
Assistant Attorneys General  
11 Attorneys for Plaintiff State of Washington  
800 Fifth Avenue, Suite 2000  
12 Seattle, WA 98104

13  
14 PEACEHEALTH

15   
16 \_\_\_\_\_  
Bradley L. Fisher, WSBA # 19895  
17 Miriam Ricanne Swedlow, WSBA #51346  
Davis Wright Tremaine, LLP  
18 920 Fifth Avenue, Suite 3300  
Seattle, WA 98104  
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