Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

_______________________, individually and on behalf of all others similarly situated, Plaintiff, v. eHEALTH, INC., SCOTT N. FLANDERS, DEREK N. YUNG, and DAVID K. FRANCIS, Defendants.	Case No. 5:20-cv-2395 **CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS** **JURY TRIAL DEMANDED**

Plaintiff, _____________ ("Plaintiff"), by and through his attorneys, alleges upon personal knowledge as to his own acts, and upon information and belief as to all other matters, based upon the investigation conducted by and through his attorneys, which included, among other things, a review of documents filed by Defendants (as defined below) with the United States Securities and Exchange Commission (the "SEC"), news reports, press releases issued by Defendants, and other publicly available documents, as follows:

NATURE AND SUMMARY OF THE ACTION

1. This is a federal securities class action on behalf of all investors who purchased or otherwise acquired eHealth, Inc. ("eHealth" or the "Company") common stock between March 19, 2018 and April 7, 2020, inclusive (the "Class Period"), seeking to recover damages caused by Defendants' violations of the federal securities laws and to pursue remedies under §§ 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder by the SEC, 17 C.F.R. § 240.10b-5.

2. eHealth is a health insurance marketplace with a technology and service platform that provides consumer engagement, education, and health insurance enrollment solutions.

3. In violation of the Exchange Act, eHealth misled investors as to its highly aggressive accounting and modeling assumptions, the significant increase in member churn after eHealth adopted Accounting Standards Codification 606 on or about January 1, 2018, and its booking of multiple years of revenue at one time. This has led to inflated financial results. Based on these representations, eHealth's stock price soared to a high of $152.19 per share.

4. Throughout the Class Period, Defendants made materially false and/or misleading statements, as well as failed to disclose material adverse facts to investors. Specifically, Defendants misrepresented and/or failed to disclose to investors: (1) its highly aggressive accounting and modeling assumptions; (2) its skyrocketing rate of member churn, resulting from eHealth's pursuit of low quality, lossmaking growth; (3) its reliance on direct response television advertising, which attracts an unprofitable, high churn enrollee; and (4) as a result of the foregoing, Defendants' public statements were materially false and misleading at all relevant times.

5. Before the markets opened on April 8, 2020, analyst Muddy Waters Research published a report in which it wrote that "EHTH's highly aggressive accounting masks what we

believe is a significantly unprofitable business."[1] Muddy Waters continued that "EHTH's persistence assumptions in its LTV[2] model seem highly aggressive when compared to reality," that "[a]fter ASC 606 went into effect, member churn immediately skyrocketed," and that "EHTH is pursuing low quality, lossmaking growth while its LTVs are based on lower churn, pre-growth cohorts." Furthermore, Muddy Waters concluded that "the key driver of growth since 2018 has been EHTH's reliance on Direct Response television advertising, which attracts an unprofitable, high churn enrollee. To generate this unprofitable growth, EHTH has been incinerating cash, which we expect it to continue to do until this value destruction slows down or stops. ***EHTH management is, in our view, running a massive stock promotion.***"

6. On this news, the stock plummeted from its April 7, 2020 closing price of $116.02 per share to an April 8, 2020 closing price of $103.20 per share, a one day drop of $12.82 or approximately 12%.

7. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, Plaintiff and other Class members have suffered significant losses and damages.

JURISDICTION AND VENUE

8. The federal law claims asserted herein arise under and pursuant to §§ 10(b) and 20(a) of the Exchange Act, 15 U.S.C. § 78(b) and 78t(a), and Rule 10b-5 promulgated thereunder by the SEC, 17 C.F.R. § 240.10b-5.

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331, § 27 of the Exchange Act, 15 U.S.C. § 78aa.

[1] *See* https://www.muddywatersresearch.com/research/ehth/mw-is-short-ehealth/ (last visited on April 8, 2020).

[2] "LTV," as used herein, refers to "long-term value."

10. This Court has jurisdiction over each Defendant named herein because each Defendant is an individual or corporation who has sufficient minimum contacts with this District so as to render the exercise of jurisdiction by the District Court permissible under traditional notions of fair play and substantial justice.

11. Venue is proper in this District pursuant to § 27 of the Exchange Act, 15 U.S.C. § 78aa and 28 U.S.C. § 1931(b), as the Company has its principal executive offices located in this District and conducts substantial business here.

12. In connection with the acts, omissions, conduct and other wrongs in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to the United States mail, interstate telephone communications and the facilities of the national securities exchange.

INTRADISTRICT ASSIGNMENT

13. Pursuant to Local Rule 3-2(c), this is a securities fraud class action to be assigned on a district-wide basis. Defendant eHealth, Inc. is headquartered in Santa Clara, CA, which is closest to the San Jose Division.

PARTIES

14. Plaintiff, as set forth in the Certification filed contemporaneously herewith, acquired shares of eHealth common stock at artificially inflated prices, and has been damaged.

15. Defendant eHealth, Inc. is incorporated under the laws of Delaware, with its principal place of business at 2625 Augustine Drive, Second Floor, Santa Clara, CA 95054. Its common stock trades on the Nasdaq stock exchange under the symbol EHTH.

16. Defendant Scott N. Flanders is the Chief Executive Officer of eHealth, Inc., and has served in that capacity since May 2016. Mr. Flanders is also a director of eHealth, Inc., and has served in that capacity since February 2008.

17. Defendant Derek N. Yung is the Chief Financial Officer of eHealth, Inc., and has served in that capacity since June 2018.

18. Defendant David K. Francis is the current Chief Operating Officer, and former Chief Financial Officer, of eHealth, Inc.

19. Defendants Flanders, Yung, and Francis are named as Defendants for violations of all counts asserted herein, and are referred to as the "Individual Defendants." The Individual Defendants, because of their positions with the Company, possessed the power and authority to control the contents of the Company's reports to the SEC, press releases and presentations to securities analysts, money and portfolio managers, and the investing public, *i.e.*, the market. The Individual Defendants were provided with copies of the Company's reports and press releases alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material, non-public information available to them, the Individual Defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive representations that were being made were then materially false and/or misleading. The Individual Defendants are therefore liable for the misstatements and omissions plead herein.

DEFENDANTS' FALSE AND MISLEADING STATEMENTS AND/OR OMISSIONS

20. On March 19, 2018, the start of the Class Period, eHealth issued its 2017 Annual Report on Form 10-K with the SEC (the "2017 10-K"). The 2017 10-K provided, in relevant part:

> The seasonality of our commission revenue will materially change in the first quarter of 2018 as a result of our adoption of Accounting Standards Update 2014-09, *Revenue from Contracts with Customers (Topic 606)*, as discussed in *Note 1-Summary of Business and Significant Accounting Policies* in the *Notes to Consolidated Financial Statements* of this Annual Report on Form 10-K.
>
> Since a significant portion of our marketing and advertising expenses consists of expenses incurred as a result of payments owed to our marketing partners in connection with health insurance applications submitted on our ecommerce

> platforms and Medicare-related leads referred to us by our marketing partners and other forms of marketing, our marketing expenses are influenced by seasonal submitted application patterns. For example, due to CMS changing the annual open enrollment period for individual and family health insurance to run from November 1, 2017 through December 15, 2017 for coverage effective in 2018, marketing and advertising expenses were highest during the fourth quarter of 2017. During the first through third quarters of 2017, marketing and advertising expenses were lower, consistent with the lower submitted applications compared to the fourth quarter of 2017. We expect these seasonal trends in marketing and advertising expenses to continue in 2018.
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> In preparation for the Medicare annual enrollment period during 2015, 2016 and 2017, and to a lesser extent the open enrollment period for individual and family health insurance plans during the same periods, we began ramping up our customer care center staff during our second and third quarters to handle the anticipated increased volume of health insurance transactions. In the first quarters of 2016 and 2017, we retained substantially all of our Medicare sales and enrollment personnel to handle the anticipated increased volume of Medicare-related applications outside of the open enrollment period. We expect these seasonal trends to continue in 2018.

21. Individual Defendants Flanders and Francis signed certifications pursuant to the Sarbanes-Oxley Act of 2002, which were appended to the 2017 10-K as exhibits. These certifications attested that "[t]he information contained in the [2017 10-K] fairly presents, in all material respects, the financial condition and results of operations of eHealth, Inc."

22. On May 9, 2018, eHealth issued its quarterly report for the first quarter of 2018 on Form 10-Q with the SEC (the "1Q 18 10-Q").[3] The 1Q 18 10-Q contained statements similar to those above from the 2017 10-K.

23. Individual Defendants Flanders and Francis signed certifications pursuant to the Sarbanes-Oxley Act of 2002, which were appended to the 1Q 18 10-Q as exhibits. These certifications attested that "[t]he information contained in the [1Q 18 10-Q] fairly presents, in all material respects, the financial condition and results of operations of eHealth, Inc."

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[3] https://www.sec.gov/Archives/edgar/data/1333493/000133349318000082/ehth3312018form10-q.htm

24. On August 7, 2018, eHealth issued its quarterly report for the second quarter of 2018 on Form 10-Q with the SEC (the "2Q 18 10-Q").[4] The 2Q 18 10-Q contained statements similar to those above in the 2017 10-K and 1Q 18 10-Q.

25. Individual Defendants Flanders and Francis signed certifications pursuant to the Sarbanes-Oxley Act of 2002, which were appended to the 2Q 18 10-Q as exhibits. These certifications attested that "[t]he information contained in the [2Q 18 10-Q] fairly presents, in all material respects, the financial condition and results of operations of eHealth, Inc."

26. On November 6, 2018, eHealth issued its quarterly report for the third quarter of 2018 on Form 10-Q with the SEC (the "3Q 18 10-Q").[5] The 3Q 18 10-Q contained statements similar to those above in the 2017 10-K, 1Q 18 10-Q, and 2Q 18 10-Q.

27. Individual Defendants Flanders and Francis signed certifications pursuant to the Sarbanes-Oxley Act of 2002, which were appended to the 3Q 18 10-Q as exhibits. These certifications attested that "[t]he information contained in the [3Q 18 10-Q] fairly presents, in all material respects, the financial condition and results of operations of eHealth, Inc."

28. On January 22, 2019, eHealth issued a press release on Form 8-K with the SEC in which it announced preliminary financial results for the fourth quarter and full year of 2018, as well as issued guidance for 2019.[6] In this press release, the Company lauded its "operational achievements and financial results for the fourth quarter and the full year 2018," with Defendant Flanders stating that eHealth's "strong execution during the critical Medicare Annual Enrollment Period validated eHealth's value proposition for this important market and has allowed us to

[4] https://www.sec.gov/Archives/edgar/data/1333493/000162828018010716/ehth6302018form10-q.htm
[5] https://www.sec.gov/Archives/edgar/data/1333493/000162828018013751/ehth9302018form10-q.htm
[6] https://www.sec.gov/Archives/edgar/data/1333493/000162828019000472/fy2018pre-releaseexhibit99.htm.

exceed our revenue and EBITDA expectations for 2018. We expect to maintain this momentum as reflected in our 2019 annual guidance."

29. In this same press release, the Company further stated:

> **2019 Guidance**
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> The company is providing the following guidance for the full year ending December 31, 2019 based on information available as of January 22, 2019. These expectations are forward-looking statements, and eHealth assumes no obligation to update these statements. Actual results may be materially different and are affected by the risk factors and uncertainties identified in this release and in eHealth's annual and quarterly filings with the Securities and Exchange Commission:
>
> - Total revenue is expected to be in the range of $290 million to $310 million. Revenue from the Medicare segment is expected to be in the range of $256 million to $272 million.
> - GAAP net income is expected to be in the range of $16.3 million to $21.3 million.
> - Adjusted EBITDA[] is expected to be in the range of $45 million to $50 million

30. On February 21, 2019, eHealth filed another press release on Form 8-K with the SEC, announcing its official fourth quarter and full year 2018 financial results.[7] In this release, which confirmed the preliminary results provided in the January 22, 2019 press release, Defendant Flanders stated:

> 2018 was a defining year for eHealth in validating our vision and growth strategy for the Medicare market. We delivered the strongest Medicare Annual Enrollment Period in the company's history, achieved a number of important executional milestones and reported financial results which significantly exceeded our expectations. I am proud of these accomplishments.

31. On March 14, 2019, eHealth issued its 2018 Annual Report on Form 10-K with the SEC (the "2018 10-K").[8] In the 2018 10-K, Defendants stated:

> On January 22, 2018, we completed our acquisition of Wealth, Health and Life Advisors, LLC, more commonly known as GoMedigap, a technology-enabled

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[7] https://www.sec.gov/Archives/edgar/data/1333493/000162828019001660/exhibit991-2018earningsrel.htm.

[8] https://www.sec.gov/Archives/edgar/data/1333493/000162828019002899/ehth12312018form10-k.htm.

provider of Medicare Supplement enrollment services. GoMedigap has built a leading consumer acquisition and engagement platform focused on meeting the Medicare Supplement insurance needs of its individual customers with a technology-enabled, consumer-centric approach that aligns with our mission and operations. This strategic acquisition significantly enhanced our growing presence in the Medicare Supplement market, put us in a stronger position with carriers and strategic partners and has helped us to us to accelerate our projected Medicare plan enrollment growth.

* * *

Increase Online Enrollment to Improve Margins and Enhance Operating Leverage

We view our consumer engagement platform as unique in the Medicare market and as attractive to the growing number of Medicare beneficiaries who prefer to research, compare and purchase health insurance online. The percentage of members who submit applications for Medicare Advantage and Medicare Supplement products online through our platform has substantially increased from 10% in 2017 to 16% in 2018. Applications submitted online include applications submitted with no assistance or some assistance from call center agents prior to the final application submission. We are able to scale growth more rapidly and at an incrementally lower cost basis though our online platform, which significantly reduces our reliance on and financial and managerial resources associated with our contact center operations. We have successfully reduced our variable marketing cost per approved Medicare member year-over-year by 12% and 9% for the years ended December 31, 2018 and 2017, respectively.

Expand Our Strategic Relationships

The value of our consumer engagement and enrollment solution platform allows us to work closely with strategic partners in the health care market to leverage their relationships with consumers. In 2018, we had strategic relationships with major retail pharmacies in the United States, with leading hospital systems in the United States and with select financial and affinity marketing organizations to expand the availability of our platform to more consumers. Through greater data integration, co-branding and further investments to improve the customer experience with our platform, we believe that we can create significant value for each of our partners and further expand each of our partner relationships.

Selectively Grow our Consumer Engagement Platform Outside of the Medicare Market

Our current focus is to operate our individual and family plan business profitably and grow the small business portion of our business. We believe that our engagement, education and enrollment platform provides high-value solutions for consumers in these markets. To capitalize on our small business opportunity, we established a dedicated small business unit in 2016.

Seasonality

The majority of our commissions revenue is recognized in the fourth quarter of each calendar year as a result of our adoption of Accounting Standards Update 2014-09, *Revenue from Contracts with Customers (ASC 606)*, which we adopted using the full retrospective transition method on January 1, 2018 and which is further discussed in *Note 1-Summary of Business and Significant Accounting Policies* in the *Notes to Consolidated Financial Statements* of this Annual Report on Form 10-K. We have historically sold a significant portion of the Medicare plans that we sell during the year in the fourth quarter during the Medicare annual enrollment period, when Medicare-eligible individuals are permitted to change their Medicare Advantage and Medicare Part D prescription drug coverage for the following year. During 2018, 2017 and 2016, 61%, 52% and 49%, respectively, of our Medicare plan-related applications were submitted during the fourth quarter. As a result, we generate a significant portion of our commission revenues related to new Medicare plan-related enrollments in the fourth quarter.

The annual open enrollment period for individual and family health insurance also takes place in the fourth quarter of the calendar year, resulting in seasonality of individual and family plan submitted applications volume. During 2018, 2017 and 2016, 64%, 52% and 33%, respectively, of our individual and family plan-related applications were submitted during the fourth quarter. As a result, we generate a significant portion of our commission revenues related to individual and family plan-related enrollments in the fourth quarter.

Our marketing and advertising expenses are typically lower in each of our first through third quarters compared to the fourth quarter. We incur a significant portion of our marketing and advertising expenses in the fourth quarter as a result of the Medicare annual enrollment period and the open enrollment period under the Affordable Care Act. Our marketing and advertising increases in the fourth quarter as a result of increased amounts owed to our marketing partners in connection with lead referral arrangements as well as an increase in the number of health insurance applications submitted on our ecommerce platforms referred to us by our marketing partners. We also typically incur an increase in other marketing and advertising related expenses in the fourth quarter. We expect this seasonal trend in marketing and advertising expenses to continue in 2019.

In preparation for the Medicare annual enrollment period during 2018, 2017 and 2016, and to a lesser extent the open enrollment period for individual and family health insurance plans during the same periods, we began ramping up our customer care center staff during the third and fourth quarters to handle the anticipated increased volume of health insurance transactions, which resulted in higher customer care and enrollment expenses in the third and fourth quarters. We expect this seasonal trend in customer care and enrollment expenses to continue in 2019.

*   *   *

We utilize a practical expedient to estimate commission revenue for each insurance product by applying the use of a portfolio approach to group approved members by the effective month of the relevant policy (referred to as a “cohort”). This allows us to estimate the commissions we expect to collect for each approved member cohort by evaluating various factors, including but not limited to, contracted commission rates, carrier mix and expected member churn.

32. Individual Defendants Flanders and Yung signed certifications pursuant to the Sarbanes-Oxley Act of 2002, which were appended to the 2018 10-K as exhibits. These certifications attested that "[t]he information contained in the [2018 10-K] fairly presents, in all material respects, the financial condition and results of operations of eHealth, Inc."

33. On April 25, 2019, eHealth issued a press release on Form 8-K with the SEC announcing its first quarter 2019 financial results.[9] In this release, Defendant Flanders offered the following quote:

> We entered 2019 with great momentum, setting the stage for another year of strong execution and growth. Our first quarter financial results were driven by strong performance of our Medicare business which exceeded our expectations, demonstrating both our unique value proposition for health care consumers and our ability to drive those consumers to our market-leading engagement and enrollment platform at scale. We continue to see significant potential to scale customer acquisition in the Medicare market while maintaining attractive costs and achieving operating leverage with our fixed costs. Based on our first quarter outperformance and our current investment plans for the year, we are increasing our 2019 annual revenue and adjusted EBITDA guidance. At the mid-point of our revised annual guidance we now expect to generate revenue growth of approximately 29% and adjusted EBITDA growth of over 70%.

34. The Company also increased its 2019 guidance in this press release, noting that:

> Total revenue is expected to be in the range of $315 million to $335 million, compared to previous guidance of $290 million to $310 million. Revenue from the Medicare segment is expected to be in the range of $281 million to $297 million, compared to previous guidance of $256 million to $272 million. Revenue from the Individual, Family and Small Business segment is expected to be in the range of $34 million to $38 million, consistent with previous guidance.

35. On May 7, 2019, eHealth released its quarterly report for the first quarter of 2019 on Form 10-Q with the SEC (the "1Q 19 10-Q").[10] In the 1Q 19 10-Q, Defendants stated:

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[9] https://www.sec.gov/Archives/edgar/data/1333493/000162828019004719/exhibit991q12019earningsre.htm.

[10] https://www.sec.gov/Archives/edgar/data/1333493/000162828019005953/ehth3312019form10-q.htm

> ***Use of Estimates***—The preparation of condensed consolidated financial statements and related disclosures in conformity with U.S. GAAP requires management to make estimates, judgments and assumptions that affect the amounts reported and disclosed in the condensed consolidated financial statements and accompanying notes. On an ongoing basis, we evaluate our estimates, including those related to, but not limited to, the useful lives of intangible assets, fair value of investments, recoverability of intangible assets, the commissions we expect to collect for each approved member cohort, valuation allowance for deferred income taxes, provision for income taxes and the assumptions used in determining stock-based compensation. We base our estimates of the carrying value of certain assets and liabilities on historical experience and on various other assumptions that we believe to be reasonable. Actual results may differ from these estimates.
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> *   *   *
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> We utilize a practical expedient to estimate commission revenue for each insurance product by applying the use of a portfolio approach to group approved members by the effective month of the relevant policy (referred to as a "cohort"). This allows us to estimate the commissions we expect to collect for each approved member cohort by evaluating various factors, including but not limited to, contracted commission rates, carrier mix and expected member churn.
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> *   *   *
>
> The constrained LTV of commissions per approved member for Medicare Advantage increased 8% in the three months ended March 31, 2019 compared to the three months ended March 31, 2018 primarily due to improved member retention and commission rate increases. The constrained LTV of commissions per Medicare Supplement approved member and constrained LTV of commissions per Medicare Part D approved member decreased 3% and 4%, respectively, in the three months ended March 31, 2019 compared to the three months ended March 31, 2018 primarily as a result of an increase in member churn. The constrained LTV of commissions per short-term approved member increased 9% in the three months ended March 31, 2019 compared to the three months ended March 31, 2018 primarily as a result of selling higher priced plans and an increase in average duration.

36. Individual Defendants Flanders and Yung signed certifications pursuant to the Sarbanes-Oxley Act of 2002, which were appended to the 1Q 19 10Q as exhibits. These certifications attested that "[t]he information contained in the [1Q 19 10-Q] fairly presents, in all material respects, the financial condition and results of operations of eHealth, Inc."

37. On July 25, 2019, eHealth issued a press release on Form 8-K with the SEC announcing its quarterly financial results for the second quarter of 2019.[11] Defendant Flanders offered the following quote:

> We delivered another strong quarter once again exceeding our expectations and building momentum in our Medicare business that has continued to scale rapidly accompanied by EBITDA margin expansion. Approved Medicare members grew 78% year-over-year, driving a 105% increase in Medicare revenue year-over-year and a significant increase in Medicare segment profit. Based on our performance to-date, access to expanded telesales capacity and continued progress in gaining greater effectiveness across our operations, we are increasing our 2019 revenue and Adjusted EBITDA guidance for the second time this year.

38. On August 8, 2019, eHealth issued its quarterly report for the second quarter of 2019 on Form 10-Q with the SEC (the "2Q 19 10-Q"). The 2Q 19 10-Q contained statements similar to those alleged above from the 1Q 19 10-Q. It further provided:

> The constrained LTV per approved member represents commissions estimated to be collected over the estimated life of an approved member's policy after applying constraints in accordance with our revenue recognition policy. The estimate is driven by multiple factors, including but not limited to, contracted commission rates, carrier mix, expected policy churn and applied constraints. These factors may result in varying values from period to period. We evaluate constrained LTVs on a quarterly basis, and as part of that process, we apply an estimated future churn factor that is based on observed historical results for that relevant product. For additional information on constraints, see *Note 1—Summary of Business and Significant Accounting Policies* in the *Notes to Condensed Consolidated Financial Statements* of this Quarterly Report on Form 10-Q.
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> For small business, the constrained LTV represents the estimated commissions we expect to collect on each member covered by the policy over the following twelve months. The estimate is driven by multiple factors, including but not limited to, contracted commission rates, carrier mix, expected policy churn and applied constraints. These factors may result in varying values from period to period.
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> The constrained LTV of commissions per approved member for Medicare Advantage plans increased 15% in the three months ended June 30, 2019 compared to the three months ended June 30, 2018 primarily due to improved member retention on some of our member cohorts, favorable product mix and commission rate increases. When comparing the three months ended June 30, 2019 to the three months ended June 30, 2018, the constrained LTV of commissions per Medicare

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[11] https://www.sec.gov/Archives/edgar/data/1333493/000162828019009042/exhibit991q22019earningsre.htm

> Supplement approved member decreased 6% primarily as a result of an increase in member churn, and the constrained LTV of commissions per Medicare Part D approved member decreased 12% primarily due to carrier mix. We experienced a decreased member retention rate in the Medicare Advantage members that we enrolled during the Medicare annual enrollment period in the fourth quarter of 2018. We believe the reintroduction of the Medicare open enrollment period during the first quarter of 2019 contributed to the decreased retention rate since Medicare Advantage members that we enrolled during the annual enrollment period in the fourth quarter of 2018 were able to enroll in another Medicare Advantage plan or disenroll from their Medicare Advantage plan and return to original Medicare during the Medicare open enrollment period. While the net impact of the Medicare open enrollment period was positive to our Medicare business, we expect the constrained LTVs for Medicare Advantage plans to decrease in the fourth quarter of 2019 compared to the fourth quarter of 2018, as we expect lower retention rates for Medicare Advantage members that we enroll during the fourth quarter going forward.
>
> The constrained LTV of commissions per qualified health plans and non-qualified health plans increased 60% and 34%, in the three months ended June 30, 2019 compared with the three months ended June 30, 2018 mostly due to improved member churn.
>
> The constrained LTV of commissions per short-term approved member increased 67% in the three months ended June 30, 2019 compared to the three months ended June 30, 2018 primarily as a result of selling higher priced plans and an increase in average duration.

39. Individual Defendants Flanders and Yung signed certifications pursuant to the Sarbanes-Oxley Act of 2002, which were appended to the 2Q 19 10Q as exhibits. These certifications attested that "[t]he information contained in the [2Q 19 10-Q] fairly presents, in all material respects, the financial condition and results of operations of eHealth, Inc."

40. On October 24, 2019, the Company issued a press release on Form 8-K with the SEC announcing its quarterly financial results for the third quarter of 2019.[12] In this release, eHealth affirmed its 2019 guidance, and Defendant Flanders offered the following quote:

> Strong momentum in our business continued with another quarter of meaningful outperformance against our expectations. Our third quarter results reflect strong revenue and enrollment growth in our Medicare and Individual & Family Plan businesses and a significant investment in our telesales capacity ahead of the Medicare Annual Enrollment Period (AEP). We have entered this AEP from a position of strength, allowing us to recently guide up to the high end of our 2019 revenue and

[12] https://www.sec.gov/Archives/edgar/data/1333493/000133349319000180/exhibit9912019q3earningsre.htm.

> adjusted EBITDA forecast based on the quality and scale of call center resources in place, the acceleration of our online enrollments and strength of consumer demand.

41. On November 8, 2019, eHealth issued its quarterly report for the third quarter of 2019 on Form 10-Q with the SEC (the "3Q 19 10-Q").[13] The 3Q 19 10-Q contained statements similar to those alleged above from the 1Q 19 10-Q and 2Q 19 10-Q.

42. Individual Defendants Flanders and Yung signed certifications pursuant to the Sarbanes-Oxley Act of 2002, which were appended to the 3Q 19 10Q as exhibits. These certifications attested that "[t]he information contained in the [3Q 19 10-Q] fairly presents, in all material respects, the financial condition and results of operations of eHealth, Inc."

43. On January 23, 2020, eHealth issued a press release on Form 8-K with the SEC announcing preliminary financial results for the fourth quarter and full year of 2019.[14] In this press release, Defendant Flanders stated:

> I am proud of our achievements in 2019. After raising our guidance twice in the past year, we significantly exceeded our financial and operating targets driven by consistently strong execution throughout the year. 2019 culminated with an exceptional performance by our team during the fourth quarter Medicare annual enrollment period. Our marketing and business development organizations drove record consumer demand to the eHealth platform allowing us to grow fourth quarter approved Medicare members in excess of 85%," commented Scott Flanders, chief executive officer of eHealth. "We remain excited about the Medicare market opportunity and significant growth potential ahead of us and are looking forward to sharing our outlook for 2020 as part of our fourth quarter earnings release next month.

44. This press release further provided, in relevant part:

> **Fourth Quarter and Fiscal Year 2019 Preliminary Results**
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> Excluding any positive impact from the changes in estimates to residual revenue for Medicare Advantage members approved since our adoption of ASC 606 through the third quarter of 2019, we expect the following fourth quarter and fiscal year 2019 results:

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[13] https://www.sec.gov/Archives/edgar/data/1333493/000133349319000188/ehth2019q3form10-q.htm

[14] https://www.sec.gov/Archives/edgar/data/1333493/000133349320000003/ex9912019q4pre-release.htm.

- Revenue for the fourth quarter of 2019 is expected to be in the range of $257.5 to $259.5 million with expected fourth quarter revenue from the Medicare segment in the range of $239.0 to $240.5 million.

- GAAP net income for the fourth quarter of 2019 is expected to be in the range of $53.0 to $55.0 million. Adjusted EBITDA[a] for the fourth quarter of 2019 is expected to be in the range of $98.5 to $100.5 million.

- Revenue for the year ended December 31, 2019 is expected to be in the range of $462.0 to $464.0 million as compared to the company's guidance of $365.0 to $385.0 million. Revenue from the Medicare segment for the full year 2019 is expected to be in the range of $403.5 to $405.0 million as compared to the company's guidance of $318.0 to $333.0 million.

- GAAP net income for the year ended December 31, 2019 is expected to be in the range of $31.0 to $33.0 million as compared to the company's guidance of $20.9 to $25.9 million.

- Adjusted EBITDA[] for the year ended December 31, 2019 is expected to be in the range of $89.0 to $91.0 million as compared to the company's guidance of $65.0 to $70.0 million.

Approved Members

The number of approved members for all Medicare products, which includes Medicare Advantage, Medicare Supplement and Medicare Part D Prescription Drug Plans, grew 88% during the fourth quarter of 2019 compared to the fourth quarter of 2018. The number of approved members for Medicare Advantage products grew 100% over the same time period. For the full year 2019, the number of approved members for all Medicare products grew 81% compared to the full year 2018 with approved members for Medicare Advantage products growing 88% over the same time period.

The number of approved members for major medical individual and family plan (IFP) products grew 1% during the fourth quarter of 2019 compared to the fourth quarter a year ago. For the full year 2019, the number of approved members for IFP products declined 25% compared to 2018. The decline in approved IFP members reflects weaker than expected enrollment activity in the overall individual and family health insurance market as well as our continuing emphasis on the Medicare business in allocating our marketing resources.

45. On February 20, 2020, eHealth issued a press release on Form 8-K with the SEC announcing its fourth quarter and full year 2019 financial results.[15] This press release provided, in relevant part:

Fourth Quarter 2019 Overview

- Revenue for the fourth quarter of 2019 was $301.7 million, a 124% increase compared to $134.9 million for the fourth quarter of 2018.

- GAAP net income for the fourth quarter of 2019 was $88.8 million compared to net income of $26.1 million for the fourth quarter of 2018.

- Adjusted EBITDA was $142.6 million for the fourth quarter of 2019 compared to $51.9 million for the fourth quarter of 2018.

- Fourth quarter 2019 revenue and adjusted EBITDA include the positive impact of $42.3 million in revenue resulting from a change in estimate for expected cash commission collections relating to existing Medicare Advantage plans enrolled in prior to the fourth quarter.

- Fourth quarter 2019 approved members for all Medicare products grew 88% compared to the fourth quarter of 2018.

* * *

Scott Flanders, chief executive officer of eHealth stated, "We ended the year on a strong note, delivering the best annual enrollment period in the company's history and generating financial results that significantly exceeded our 2019 annual guidance across multiple metrics, including revenue, GAAP net income and adjusted EBITDA. We also significantly increased our Medicare enrollment volumes and the number of major medical Medicare applications submitted online through our platform compared to a year ago - a critical element of our Medicare growth strategy. I would like to emphasize that the high level of enrollment and revenue growth that we achieved in 2019 were accompanied by meaningful adjusted EBITDA and GAAP net income margin expansion compared to 2018. Looking ahead, we anticipate the momentum we have built over the past two years to continue into 2020, and we believe we are well-positioned to continue outpacing the overall Medicare market growth as a result of our strong consumer value proposition, the depth of our technology platform and our demand generation expertise."

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[15] https://www.sec.gov/Archives/edgar/data/1333493/000133349320000011/exhibit9912019q4earningsre.htm.

During the fourth quarter of 2019, eHealth worked with an external corporate valuation consultant to enhance its approach to estimating the lifetime values of plans it sold and to incorporate statistical tools to increase the accuracy of these estimates with an emphasis on improving member retention forecasting. Fourth quarter and full year 2019 financial results reflect the impact of the changes made to enhance eHealth's Medicare Advantage plan lifetime value forecasting model resulting from this project. Specifically, our fourth quarter and full year 2019 revenue each included a positive impact of $50.8 million from the change in estimate for expected cash commission collections relating to outstanding Medicare Advantage plans. Of this amount, $42.3 million is a change in estimate in expected cash commission collections for Medicare Advantage plans since we began selling such products through the third quarter of 2019.

46. On March 2, 2020, the Company issued its 2019 annual report on Form 10-K with the SEC (the "2019 10-K").[16] The 2019 10-K confirmed the financial results announced in the aforementioned February 20, 2020 press release on Form 8-K. The 2019 10-K provided, in relevant part:

Our operating results will be impacted by factors that impact our estimate of the constrained lifetime value (LTV) of commissions per approved member.
Effective January 1, 2018, we adopted Accounting Standards Update 2014-09, *Revenue from Contracts with Customers (ASC 606)* using the full retrospective method, which required us to revise our historical financial information by applying the new standard. The adoption had a material impact on our consolidated financial statements. The most significant impact of the standard was on our commission revenue. Since the adoption of ASC 606, we recognize revenue at the time of plan approval by applying the latest estimated constrained LTV for that product. We estimate commission revenue for each product by using a portfolio approach to a group of approved members by plan type and the effective month of the relevant plan, which we refer to as "cohorts". We estimate the cash commissions we expect to collect for each approved member cohort by evaluating various factors, including but not limited to, commission rates, carrier mix, estimated average plan duration, the regulatory environment, and cancellations of insurance plans offered by health insurance carriers with which we have a relationship. On a quarterly basis, we recompute LTV at a cohort level for all outstanding cohorts, review and monitor changes in the data used to estimate LTV as well as the cash received for each cohort as compared to our original estimates. The fluctuations of cash received for each cohort and LTV can be significant and may or may not be indicative of the need to adjust LTVs for prior period cohorts. Management analyzes these fluctuations and, to the extent we see changes in our estimates of the cash commission collections that we believe are indicative of an increase or decrease to prior period LTVs, we will adjust LTV for the affected cohorts at the time such determination is made. Changes in LTV may result in an increase or a decrease to

[16] https://www.sec.gov/ix?doc=/Archives/edgar/data/1333493/000133349320000021/ehth2019form10-k.htm.

revenue and a corresponding increase or decrease to commissions receivable, accordingly. We refer the net commission revenue from members approved in prior periods as "adjustment revenue" and our revenue can fluctuate significantly from period to period as a result of adjustment revenue.

Adjustment revenue can have a significant favorable or unfavorable impact on our revenue. During the fourth quarter of 2019, we incorporated statistical tools to increase the accuracy of LTV estimates with an emphasis on improving member retention forecasting. As a result, we recognized adjustment revenue of $50.8 million for Medicare Advantage plans during the fourth quarter of 2019, which increased our adjustment revenue for all Medicare products to $55.3 million for the year ended December 31, 2019.

As we continue to evaluate our LTV estimation models, we may in the future make further changes based on a number of factors and such changes could result in significant increases or decreases in our revenue. Constrained LTVs are estimates and are based on a number of assumptions, which include, but are not limited to, estimates of the conversion rates of approved members into paying members, forecasted average plan duration and forecasted commission rates we expect to receive per approved member's plan. These assumptions are based on historical trends and require significant judgment by our management in interpreting those trends and in applying the constraints. Changes in our historical trends will result in changes to our constrained LTV estimates in future periods and therefore could adversely affect our revenue and financial results in those future periods. As a result, negative changes in the factors upon which we estimate constrained LTVs, such as reduced conversion of approved members to paying members, increased health insurance plan termination or a reduction in the lifetime commission amounts we expect to receive for selling the plan to a member or other changes could harm our business, operating results and financial condition. In addition, if we ultimately receive commission payments that are less than the amount we estimated when we recognized commission revenue, we would need to write off the remaining commission receivable balance, which would adversely impact our business, operating results, and financial condition.

The rate at which approved members become paying members is a significant factor in our estimation of constrained LTVs. For example, during the first open enrollment period under the Affordable Care Act, we experienced a decline in the rate at which members approved for individual and family health insurance turned into paying members, which harmed our operating results. To the extent we experience a similar decline in the rate at which approved members turn into our paying members, our business, operating results, and financial condition would be harmed.

The forecasted average plan duration is another important factor in our estimation of constrained LTV. We receive commissions from health insurance carriers for health insurance plans sold through us. When one of these plans is canceled, or if we otherwise do not remain the agent on the policy, we no longer receive the related commission payment. Our forecasted average plan duration and health insurance plan termination rate are calculated based on our historical data by plan type. As a

> result, our inability to produce accurate forecasted average plan duration may adversely impact our business, operating results and financial condition.
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> Commission rates are also part of the significant factors in our estimation of constrained LTVs. The commission rates we receive are impacted by a variety of factors, including the particular health insurance plans chosen by our members, the carriers offering those plans, our members' states of residence, the laws and regulations in those jurisdictions, the average premiums of plans purchased through us and health care reform. Our commission revenue per member has in the past decreased, and could in the future decrease, as a result of reductions in contractual commission rates, a change in the mix of carriers whose products we sell during a given period, and increased health insurance plan termination rates, all of which are beyond our control and may occur on short notice. To the extent these and other factors cause our commission revenue per member to decline, our revenue may decline and our business, operating results and financial condition would be harmed. Given that Medicare-related and individual and family health insurance purchasing is concentrated during enrollment periods, we may experience a shift in the mix of Medicare-related and individual and family health insurance products selected by our members over a short period of time. Any reduction in our average commission revenue per member during the enrollment periods caused by such a shift or otherwise would harm our business, operating results and financial condition.

47. Individual Defendants Flanders and Yung signed certifications pursuant to the Sarbanes-Oxley Act of 2002, which were appended to the 2019 10-K as exhibits. These certifications attested that "[t]he information contained in the [2019 10-K] fairly presents, in all material respects, the financial condition and results of operations of eHealth, Inc."

48. The statements in ¶¶ 20-47 were materially false and misleading and omitted to disclose material information. Specifically, Defendants misrepresented and/or failed to disclose to investors: (1) its highly aggressive accounting and modeling assumptions; (2) its skyrocketing rate of member churn, resulting from eHealth's pursuit of low quality, lossmaking growth; (3) its reliance on direct response television advertising, which attracts an unprofitable, high churn enrollee; and (4) as a result of the foregoing, Defendants' public statements were materially false and misleading at all relevant times.

49. Defendants knew, or in reckless disregard for the truth should have known, that at the time the statements in ¶¶ 20-47 were made, they were false and/or misleading, and/or failed to disclose material information to investors.

THE TRUTH BEGINS TO EMERGE

50. Before the markets opened on April 8, 2020, analyst Muddy Waters Research published a report in which it wrote that "EHTH's highly aggressive accounting masks what we believe is a significantly unprofitable business."[17] Muddy Waters continued that "EHTH's persistence assumptions in its LTV model seem highly aggressive when compared to reality," that "[a]fter ASC 606 went into effect, member churn immediately skyrocketed," and that "EHTH is pursuing low quality, lossmaking growth while its LTVs are based on lower churn, pre-growth cohorts." Furthermore, Muddy Waters concluded that "the key driver of growth since 2018 has been EHTH's reliance on Direct Response television advertising, which attracts an unprofitable, high churn enrollee. To generate this unprofitable growth, EHTH has been incinerating cash, which we expect it to continue to do until this value destruction slows down or stops. ***EHTH management is, in our view, running a massive stock promotion.***"

51. On this news, ***eHealth's stock price plummeted by approximately 12% in one day***, from an April 7, 2020 close of $116.02 to an April 8, 2020 close of $103.20 per share.

52. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of eHealth's securities, Plaintiff and other members of the Class have suffered significant losses and damages.

CLASS ACTION ALLEGATIONS

53. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a class of all persons and entities who purchased or otherwise

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[17] *See* https://www.muddywatersresearch.com/research/ehth/mw-is-short-ehealth/ (last visited on April 8, 2020).

acquired eHealth common stock between March 19, 2018 and April 7, 2020, inclusive, seeking to recover damages caused by Defendants' violations of the federal securities laws and to pursue remedies under §§ 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder by the SEC, 17 C.F.R. § 240.10b-5. Excluded from the Class are Defendants, directors and officers of the Company, as well as their families and affiliates.

54. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court.

55. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

a. Whether the Exchange Act was violated by Defendants;

b. Whether Defendants omitted and/or misrepresented material facts;

c. Whether Defendants' statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;

d. Whether Defendants knew or recklessly disregarded that their statements were false and misleading;

e. Whether the price of the Company's stock was artificially inflated; and

f. The extent of damage sustained by Class members and the appropriate measure of damages.

56. Plaintiff's claims are typical of those of the Class because Plaintiff and the Class sustained damages from Defendants' wrongful conduct alleged herein.

57. Plaintiff will adequately protect the interests of the Class and have retained counsel who are experienced in class action securities litigation. Plaintiff has no interests that conflict with those of the Class.

58. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

FRAUD ON THE MARKET

59. Plaintiff will rely upon the presumption of reliance established by the fraud-on- the-market doctrine that, among other things:

a. Defendants made public misrepresentations or failed to disclose material facts during the Class Period;

b. The omissions and misrepresentations were material;

c. The Company's common stock traded in efficient markets;

d. The misrepresentations alleged herein would tend to induce a reasonable investor to misjudge the value of the Company's common stock; and

e. Plaintiff and other members of the class purchased the Company's common stock between the time Defendants misrepresented or failed to disclose material facts.

60. At all relevant times, the markets for the Company's stock were efficient for the following reasons, among others: (i) the Company filed periodic public reports with the SEC; and (ii) the Company regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the major news wire services and through other wide-ranging public disclosures such as communications with the financial press, securities analysts, and other similar reporting services. Plaintiff and the Class relied on the price of the Company's common stock, which reflected all information in the market, including the misstatements by Defendants.

NO SAFE HARBOR

61. The statutory safe harbor provided for forward-looking statements under certain conditions does not apply to any of the allegedly false statements pleaded in this Complaint. The specific statements pleaded herein were not identified as forward-looking statements when made.

62. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements.

SCIENTER ALLEGATIONS

63. As alleged herein, Defendants acted with scienter since Defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and/or misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, the Individual Defendants, by virtue of their receipt of information reflecting the true facts regarding eHealth, their control over, and/or receipt and/or modification of eHealth's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning eHealth, participated in the fraudulent scheme alleged herein.

LOSS CAUSATION

64. Before the markets opened on April 8, 2020, analyst Muddy Waters Research issued its highly critical research report, as alleged above. On this news, the stock plummeted from an April 7, 2020 closing price of $116.02 per share to close at $103.20 on April 8, 2020, a one day drop of $12.82 or approximately 12%.

CAUSES OF ACTION

COUNT ONE
Violations of § 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder

65. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

66. During the Class Period, Defendants disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose the material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

67. Defendants violated § 10(b) of the Exchange Act and Rule 10b-5 in that they: (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon those who purchased or otherwise acquired the Company's securities during the class period.

68. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for the Company's common stock. Plaintiff and the Class would not have purchased the Company's common stock at the price paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by Defendants' misleading statements.

COUNT TWO
Violations of § 20(a) of the Exchange Act
(Against the Individual Defendants)

69. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

70. The Individual Defendants acted as controlling persons of the Company within the meaning of § 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions

at the Company, the Individual Defendants had the power and authority to cause or prevent the Company from engaging in the wrongful conduct complained of herein. The Individual Defendants were provided with or had unlimited access to the documents described above which contained statements alleged by Plaintiff to be false or misleading both prior to and immediately after their publication, and had the ability to prevent the issuance of those materials or to cause them to be corrected so as not to be misleading.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows:

a) determining that this action is a proper class action pursuant to Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the Class as defined herein, and a certification of Plaintiff as class representative pursuant to Rule 23 of the Federal Rules of Civil Procedure and appointment of Plaintiff's counsel as Lead Counsel;

b) awarding compensatory and punitive damages in favor of Plaintiff and the other class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including pre-judgment and post- judgment interest thereon.

c) awarding Plaintiff and other members of the Class their costs and expenses in this litigation, including reasonable attorneys' fees and experts' fees and other costs and disbursements; and

d) awarding Plaintiff and the other Class members such other relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury in this action of all issues so triable.