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8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 **THE STATE OF CALIFORNIA; THE**
12 **STATE OF CONNECTICUT; THE STATE**
13 **OF DELAWARE; THE DISTRICT OF**
14 **COLUMBIA; THE STATE OF ILLINOIS;**
15 **THE STATE OF IOWA; THE**
16 **COMMONWEALTH OF KENTUCKY;**
17 **THE STATE OF MARYLAND; THE**
18 **COMMONWEALTH OF**
19 **MASSACHUSETTS; THE STATE OF**
20 **MINNESOTA; THE STATE OF NEW**
MEXICO; THE STATE OF NEW YORK;
THE STATE OF NORTH CAROLINA; THE
STATE OF OREGON; THE
COMMONWEALTH OF PENNSYLVANIA;
THE STATE OF RHODE ISLAND; THE
STATE OF VERMONT; THE
COMMONWEALTH OF VIRGINIA; and
THE STATE OF WASHINGTON,

21 Plaintiffs,

22 v.

23 **DONALD J. TRUMP, President of the United**
24 **States; ERIC D. HARGAN, Acting Secretary**
25 **of the United States Department of Health**
26 **and Human Services; UNITED STATES**
27 **DEPARTMENT OF HEALTH AND**
HUMAN SERVICES; STEVEN T.
MNUCHIN, Secretary of the United States
Department of the Treasury; UNITED
STATES DEPARTMENT OF THE
TREASURY; and DOES 1-20,

28 Defendants.

Case No. 4:17-cv-05895-KAW

DECLARATION OF J. MICHAEL BROWN, DEPUTY ATTORNEY GENERAL OF KENTUCKY, ISO PLAINTIFFS' APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE

1 I, J. Michael Brown, Deputy Attorney General of Kentucky, declare as follows:

- 2 1. Pursuant to filings with the Kentucky Department of Insurance, Kentucky currently has
3 two health insurance providers that offer health plans on the individual market that
4 comply with the Affordable Care Act – Anthem Health Plans of Kentucky, Inc. (Anthem)
5 and CareSource Kentucky Co. (CareSource). (*See* Health Rate Filings,
6 <http://insurance.ky.gov/ratefil-/default.aspx>, last visited on October 17, 2017).
7
- 8 2. On August 16, 2017, Anthem submitted a rate filing for the Individual market ACA-
9 compliant plans offered by Anthem throughout the Commonwealth of Kentucky during
10 the 2018 calendar year. (*See* Anthem Rate Filing Justification [http://insurance.ky.gov/r-](http://insurance.ky.gov/ratefil/RFDdocuments/2017-007014R_3.pdf)
11 [atefil/RFDdocuments/2017-007014R_3.pdf](http://insurance.ky.gov/ratefil/RFDdocuments/2017-007014R_3.pdf), last visited on October 17, 2017).
12
- 13 3. In that rate filing, Anthem submitted proposed rate increase of 41.2%, with rate changes
14 by plan that vary from 29.5% to 48.3% with the expectation that Cost Sharing Reductions
15 (CSR) funding credits would not be issued. (*See id.*).
- 16 4. The Kentucky Department of Insurance has currently approved Anthem for an average
17 rate increase of 41.2%. (*See* Anthem Approval, [http://insurance.ky.gov/ratefil/-](http://insurance.ky.gov/ratefil/-RFDdocuments/2017-007014-R_4.pdf)
18 [RFDdocuments/2017-007014-R_4.pdf](http://insurance.ky.gov/ratefil/-RFDdocuments/2017-007014-R_4.pdf), last visited on October 17, 2017).
19
- 20 5. On August 11, 2017, CareSource submitted a rate filing for the Individual market ACA-
21 compliant plans offered by CareSource in sixty-one (61) counties in the Commonwealth
22 of Kentucky during the 2018 calendar year. (*See* CareSource Rate Filing Justification,
23 [ihhttp://insurance.ky.gov/ratefil/RFDdocuments/2017-007073-R_3.pdf](http://insurance.ky.gov/ratefil/RFDdocuments/2017-007073-R_3.pdf), last visited on
24 October 17, 2017).
- 25 6. In that rate filing, CareSource submitted a proposed rate increase based on the assumption
26 that the CSR will not be funded. (*See id.*).
- 27 7. On September 1, 2017, the Kentucky Department of Insurance approved a rate increase of
28

1 56%. (See CareSource Approval, [http://insurance.ky.gov/ratefil/RFDdocuments/2017-](http://insurance.ky.gov/ratefil/RFDdocuments/2017-007073-R_4.pdf)
2 007073-R_4.pdf, last visited on October 17, 2017).

3 8. Both Anthem and CareSource retain the right to amend their actuarial memorandums of
4 their proposed rate filing requests to account for future developments regarding the
5 funding of CSR. (See http://insurance.ky.gov/ratefil/RFDdocuments/2017-007014-R_3.pdf;
6 http://insurance.ky.gov/ratefil/RFDdocuments/2017-007073-R_3.pdf, last visited on
7 October 17, 2017).


8
9 9. Kentucky law requires insurers to submit new filings to reflect any material change to the
10 previously filed and approved rate filing. Ky. Rev. Stat. 304.17A-095.

11 10. Furthermore, Kentucky law permits the Attorney General to compel a hearing before the
12 Commissioner of the Department of Insurance to determine whether the rates are
13 excessive or inadequate. *Id.*

14
15 11. Over 80,000 Kentuckians will see a dramatic increase in their premiums as a result of the
16 administration's decision to not fund the CSR.

17 12. A temporary restraining order and preliminary injunction requiring the funding of the
18 CSR would permit Anthem, CareSource, the Kentucky Department of Insurance and the
19 Attorney General to take action seeking to prevent this premium increase for over 80,000
20 Kentuckians while this civil action is pending.

21
22
23 Date: 10/17/17


24 J. MICHAEL BROWN
25 DEPUTY ATTORNEY GENERAL