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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO/OAKLAND DIVISION**

THE STATE OF CALIFORNIA; THE STATE OF CONNECTICUT; THE STATE OF DELAWARE; THE DISTRICT OF COLUMBIA; THE STATE OF ILLINOIS; THE STATE OF IOWA; THE COMMONWEALTH OF KENTUCKY; THE STATE OF MARYLAND; THE COMMONWEALTH OF MASSACHUSETTS; THE STATE OF 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,

Plaintiffs,

v.

DONALD J. TRUMP, President of the United States; ERIC D. HARGAN, Acting Secretary of the United States Department of Health and Human Services; UNITED STATES 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,

Defendants.

NO. 4:17-cv-05895-KAW

DECLARATION OF William Ely, Vice President, Actuarial Services, Kaiser Foundation Health Plan, Inc., representing Kaiser Foundation Health Plan of the Northwest

I, William Ely, declare as follows:

- 1 1. I am over the age of 18 years of age, have personal knowledge of all facts and
2 matters herein, and am competent to testify to the matters below.
- 3 2. I am the Vice President, Actuarial Services of Kaiser Foundation Health Plan,
4 Inc. For Kaiser Foundation Health Plan of the Northwest (“KPNW”), my
5 responsibilities include decision-making regarding KPNW’s rate filings with the
6 Washington Office of the Insurance Commissioner and the Oregon Division of
7 Financial Regulation and the incorporation of Cost-Sharing Reduction (CSR)
8 payments into rate-setting.
- 9 3. Kaiser Permanente is an integrated health system that provides care and
10 coverage for nearly 12 million members in eight states and the District of
11 Columbia. Each day, more than 200,000 dedicated employees and
12 approximately 22,000 Permanente Medical Group physicians come to work at
13 Kaiser Permanente to care for our members and deliver on our commitment to
14 improving the health of the 65 million people living in the communities we
15 serve.
- 16 4. In Kaiser Permanente’s Northwest region which encompasses Oregon and
17 Washington, there are approximately 576,336 members, who are served by
18 approximately 14,000 employees and physicians. KPNW participated in the
19 individual market before the Affordable Care Act (“ACA”) took effect – and we
20 continue to do so. Over 600,000 of our nearly 12 million members receive
21 coverage and care from Kaiser Permanente through the ACA’s health insurance
22 exchanges, 33,564 of them in Oregon and southwest Washington.
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1 5. Political, regulatory, and financial uncertainty has driven higher premiums and
2 fewer choices for consumers. I expect the President's decision to stop Cost-
3 Sharing Reduction (CSR) payments will contribute to the destabilization of the
4 market, leading to higher premiums and further threaten or impair consumer
5 choice.

6
7 6. The ACA requires any health plan issuer that participates on the Exchange to
8 offer at least one Silver and one Gold plan. When an issuer offers a Silver plan,
9 the ACA also requires that three Silver plan variations also be offered. These are
10 the plans in which individuals entitled to a CSR subsidy are enrolled.
11 Consequently, any issuer that participates in the Exchange must offer at least one
12 set of these Silver plan variations for which CSR payments will be received.

13
14 7. CSR payments are an important subsidy, provided by the ACA, to help low-
15 income people manage deductibles and out-of-pocket costs. The law requires
16 health plans to offer Silver plan coverage to individuals with incomes up to
17 250% of the federal poverty level with discounted out-of-pocket costs (co-
18 payments and co-insurance) and deductibles. In turn, the ACA directs the
19 federal government to make CSR payments to the health plan issuers to support
20 the mandated reduced rates.

21
22 8. In Oregon and Washington, KPNW has 11,989 members who are supported by
23 CSR payments and 26,888 members who are on Silver Plans, which is the type
24 of plan supported by CSR payments.

25 9. KPNW estimated that it will receive CSR payments of \$18,225,000 in 2018.
26

1 10. In the event the 2018 CSR payments are not made, KPNW expects that it will
2 need to raise premiums to cover the expected payments from the federal
3 government to support low income members.

4 11. Because of the uncertainty over whether the federal government would make
5 CSR payments, KPNW has identified two sets of rates for 2018 – what we
6 would charge consumers if the CSR payments are made and what we will be
7 forced to charge if the CSR payments are not made.
8

9 12. The Oregon Division of Financial Regulation instructed carriers on October 13,
10 2017 to increase on and off Exchange rates by 7.1%, and KPNW will follow
11 Commissioner Kreidler’s October 16, 2017 direction to use the higher of our
12 filed rates.

13 13. The average 2018 rate increase for a KPNW member on a Silver Plan if CSR
14 payments are continued is 15% in both states.

15 14. The average 2018 rate increase for a KPNW member on a Silver Plan if CSR
16 payments are not made is 23% in Oregon and 30% in Washington.

17 15. The ACA requires that the same rates be charged for the same plans when they
18 are offered both through the Exchange and outside the Exchange. Raising the
19 rates for Silver plans offered through the Exchange in Washington and both on
20 and off the Exchange in Oregon, therefore, will increase the rates charged for
21 individuals who are enrolled outside the Exchange in Silver plans and who do not
22 receive any federal subsidy to defray the cost of their coverage and/or care.
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1 19,315 number of enrollees will be affected by the rate increases due to lack of
2 CSR payments.

3 16. While KPNW will continue to work in partnership with the state legislatures and
4 Insurance Commissioners Kreidler and Straight to find ways to provide high-quality,
5 affordable health care in Oregon and Washington States.
6

7 I affirm under penalty of perjury that the foregoing is true and correct to the best of my
8 knowledge and belief.

9 DATED this 17th day of October, 2017, at Portland, Oregon.
10

11  Recoverable Signature

12
13 X William R Ely

14 _____
William R Ely

15 Signed by: William Ely
16 Vice President, Actuarial Services, Kaiser
17 Foundation Health Plan, Inc.
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