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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**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.

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

**DECLARATION OF WILLIAM R. ELY, VICE PRESIDENT, ACTUARIAL SERVICES, FOR KAISER FOUNDATION HEALTH PLAN, INC. ISO PLAINTIFFS' APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

1 I, William R. Ely, declare as follows:

- 2 1. I am over the age of 18 years of age, have personal knowledge of all facts and  
3 matters herein, and am competent to testify to the matters below.
- 4 2. I am the Vice President, Actuarial Services, for Kaiser Foundation Health Plan,  
5 Inc. At Kaiser Foundation Health Plan of Washington (“KPWA”), my  
6 responsibilities include decision-making regarding rate filings with the  
7 Washington State Office of the Insurance Commissioner (OIC) and the  
8 incorporation of Cost-Sharing Reduction (CSR) 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 Washington State, KPWA and its subsidiary health carrier (Kaiser  
17 Foundation Health Plan of Washington Options, Inc.) collectively have  
18 approximately 680,000 members, who are served by approximately 8,200  
19 employees and physicians. KPWA participated in the individual market before  
20 the Affordable Care Act (“ACA”) took effect – and we continue to do so. Over  
21 600,000 of our nearly 12 million members nationally receive coverage and care  
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1 from Kaiser Permanente through the ACA's health insurance exchanges, 40,599  
2 of them, provided by KPWA in Washington State.

3 5. Political, regulatory, and financial uncertainty has driven higher premiums and  
4 fewer choices for consumers. Kaiser Permanente expects that the President's  
5 decision to stop Cost-Sharing Reduction (CSR) payments will contribute to the  
6 destabilization of the market, leading to higher premiums and further threaten or  
7 impair consumer choice.

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

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16 7. CSR payments are an important subsidy, provided by the ACA, to help low-  
17 income people manage deductibles and out-of-pocket costs. The law requires  
18 health plans to offer Silver plan coverage to individuals with incomes up to  
19 250% of the federal poverty level with discounted out-of-pocket costs (co-  
20 payments and co-insurance) and deductibles. In turn, the ACA directs the  
21 federal government to make CSR payments to the health plan issuers to support  
22 the mandated reduced rates. In Washington State, KPWA has 13,824 members  
23 who are supported by CSR payments and 31,367 members who are on Silver  
24 Plans.  
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- 1 8. KPWA estimated that it would receive CSR payments of \$11.3 million in 2018.
- 2 9. In the event the 2018 CSR payments are not made, KPWA expects that it will  
3 need to raise premiums to cover the expected payments from the federal  
4 government to support low income members.
- 5 10. Because of the uncertainty over whether the federal government would make  
6 CSR payments, KPWA has identified two sets of rates for 2018 – what we  
7 would charge consumers if the CSR payments are made and what we will be  
8 required to charge if the CSR payments are not made.
- 9 11. The average 2018 rate increase for a KPWA member on an on-Exchange Silver  
10 Plan if CSR payments are continued is 19%.
- 11 12. The average 2018 rate increase for a KPWA member on an on-Exchange Silver  
12 Plan if CSR payments are not made is 45%.
- 13 13. KPWA will follow Commissioner Kreidler’s October 16, 2017, direction to use  
14 the higher of our filed rates, as referenced in paragraph 12.
- 15 14. The ACA requires that the same rates be charged for the same plans when they  
16 are offered both through the Exchange and outside the Exchange. Raising the  
17 rates for Silver plans offered through the Exchange, therefore, will increase the  
18 rates charged for individuals who are enrolled outside the Exchange in Silver  
19 plans and who do not receive any federal subsidy to defray the cost of their  
20 coverage and/or care. 12,181 KPWA enrollees will be affected by the rate  
21 increases due to lack of CSR payments.
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15. KPWA will continue to work in partnership with the state legislature and Insurance Commissioner Mike Kreidler to find ways to provide high-quality, affordable health care in Washington State.

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

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

 Recoverable Signature

**X** William R. Ely

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William R. Ely  
Vice President, Actuarial Services  
Signed by: William Ely

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