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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-KEW

DECLARATION OF William Ely,
Vice President, Actuarial Services,
Kaiser Foundation Health Plan, Inc.

1 I, William 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., a California nonprofit public benefit corporation, which is authorized to do
6 business in the State of Hawaii ("KP Hawaii Region"), where my responsibilities
7 include decision-making regarding KP Hawaii Region's rate filings with the
8 Insurance Commissioner of the State of Hawaii and the incorporation of Cost-
9 Sharing Reduction (CSR) payments into rate-setting.
- 10 3. Kaiser Permanente is an integrated health system that provides care and
11 coverage for nearly 12 million members in eight states and the District of
12 Columbia. Each day, more than 200,000 dedicated employees and
13 approximately 22,000 Permanente Medical Group physicians come to work at
14 Kaiser Permanente to care for our members and deliver on our commitment to
15 improving the health of the 65 million people living in the communities we
16 serve.
- 17 4. In the State of Hawaii, KP Hawaii Region has approximately 250,955 members,
18 who are served by approximately 3,677 employees and 455 physicians. KP
19 Hawaii Region participated in the individual market before the Affordable Care
20 Act ("ACA") took effect – and we continue to do so. Over 600,000 of Kaiser
21 Permanente's nearly 12 million members receive coverage and care from Kaiser
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1 Permanente, nationally, through the ACA's health insurance exchanges, 7,665
2 of them in the State of Hawaii.

- 3 5. KP Hawaii Region believes that the President's decision to stop CSR payments
4 will contribute to the destabilization of the market, leading to higher premiums
5 and further threaten or impair consumer choice.
- 6 6. The ACA requires any health plan issuer that participates on the Exchange to
7 offer at least one Silver and one Gold plan. When an issuer offers a Silver plan,
8 the ACA also requires that three Silver plan variations also be offered. These are
9 the plans in which individuals entitled to a CSR subsidy are enrolled.
10 Consequently, any issuer that participates in the Exchange must offer at least one
11 set of these Silver plan variations for which CSR payments will be received.
- 12 7. CSR payments are an important subsidy, provided by the ACA, to help low-
13 income people manage deductibles and out-of-pocket costs. The law requires
14 health plans to offer Silver plan coverage to individuals with incomes up to
15 250% of the federal poverty level with discounted out-of-pocket costs (co-
16 payments and co-insurance) and deductibles. In turn, the ACA directs the
17 federal government to make CSR payments to the health plan issuers to support
18 the mandated reduced rates.
- 19 8. In the State of Hawaii, KP Hawaii Region has approximately 4,253 members
20 who are supported by CSR payments.
- 21 9. KP Hawaii Region estimated that it will receive CSR payments of \$3,000,000 in
22 2018.
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1 10. Because of the uncertainty over whether the federal government would make
2 CSR payments, KP Hawaii Region identified two sets of rates for 2018 – what
3 we would charge consumers if the CSR payments are made and what we would
4 charge if the CSR payments are not made.

5
6 11. At the direction of the State of Hawaii Insurance Commissioner, the KP Hawaii
7 Region filed on-exchange rates for our silver plan assuming that CSR payments
8 will be discontinued.

9 12. The average 2018 rate increase for a KP Hawaii Region member on a Silver
10 Plan if CSR payments are continued is 17%.

11 13. The average 2018 rate increase for a KP Hawaii Region member on a Silver
12 Plan if CSR payments are not made is 34%.

13
14 I affirm under penalty of perjury that the foregoing is true and correct to the best of my
15 knowledge and belief.

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

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19 _____
20 William Ely
21 Vice President, Actuarial Services for the KP
22 Hawaii Region
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