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8. IN THE UNITED STATES DISTRICT COURT  
 9. 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**  
 21. **MEXICO; THE STATE OF NEW YORK;**  
 22. **THE STATE OF NORTH CAROLINA; THE**  
 23. **STATE OF OREGON; THE**  
 24. **COMMONWEALTH OF PENNSYLVANIA;**  
 25. **THE STATE OF RHODE ISLAND; THE**  
 26. **STATE OF VERMONT; THE**  
 27. **COMMONWEALTH OF VIRGINIA; and**  
 28. **THE STATE OF WASHINGTON,**

Plaintiffs,

v.

22. **DONALD J. TRUMP, President of the United**  
 23. **States; ERIC D. HARGAN, Acting Secretary**  
 24. **of the United States Department of Health**  
 25. **and Human Services; UNITED STATES**  
 26. **DEPARTMENT OF HEALTH AND**  
 27. **HUMAN SERVICES; STEVEN T.**  
 28. **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 SETH**  
**MENDELSON, EXECUTIVE DEPUTY**  
**INSURANCE COMMISSIONER,**  
**PENNSYLVANIA INSURANCE**  
**DEPARTMENT ISO PLAINTIFFS'**  
**APPLICATION FOR A TEMPORARY**  
**RESTRAINING ORDER AND ORDER**  
**TO SHOW CAUSE WHY A**  
**PRELIMINARY INJUNCTION SHOULD**  
**NOT ISSUE**

1 I, Seth Mendelsohn, declare and state as follows:

2 1. I am the Executive Deputy Insurance Commissioner for the Pennsylvania  
3 Department of Insurance. In this capacity I oversee, *inter alia*, the Office of Insurance Product  
4 Regulation and Administration, including the Bureau of Life, Accident and Health Insurance.  
5 That Bureau is responsible for reviewing and approving health insurance rates.

6 2. The Pennsylvania Insurance Department (the "Department") is the primary  
7 regulator for all health insurance products sold in the Commonwealth of Pennsylvania.

8 3. Under the Patient Protection and Affordable Care Act (the "ACA"), the  
9 Department is responsible for reviewing and approving rates charged by all ACA-compliant  
10 individual and small group health plans offered in the Commonwealth.

11 4. The process of reviewing and approving these rates takes several months and  
12 requires close coordination between the Department and insurers that wish to offer plans in the  
13 Commonwealth.

14 5. On March 14, 2017, the Department issued guidance for insurers outlining the  
15 review and approval process for the 2018 plan year. Under this guidance, all insurers were  
16 required to submit their initial rate filings by May 22, 2017. The Department then reviewed the  
17 initial submissions and made them public on July 21, 2017.

18 6. Based on its analysis of insurers' submissions, the Department was prepared to  
19 approve an average statewide rate increase for individual plans in 2018 of 7.6 percent over the  
20 prior year's rates.

21 7. This projected increase was significantly lower than in prior years, reflecting the  
22 increasing stability of the market for ACA plans in the Commonwealth.

23 8. In publicly announcing the rates, however, the Department made clear that this  
24 stability was threatened by ongoing uncertainty about the Trump Administration's intentions with  
25 respect to whether it would continue the payment of Cost-Sharing Reduction Subsidies (CSRs) to  
26 insurers, as well as additional uncertainty about whether or not the Trump Administration would  
27 continue to enforce the ACA's individual mandate.

28 9. CSR payments are vital to the affordability of ACA coverage for many

1 individuals in Pennsylvania. Of the more than 439,000 Pennsylvanians who purchased individual  
2 marketplace plans in 2016, approximately 225,000 – more than half – purchased plans with the  
3 aid of CSR subsidies, and more than \$200,000,000 in CSR payments were made on behalf of  
4 these consumers.

5 10. Given the importance of CSR payments to the ACA's operation in Pennsylvania,  
6 the Department publicly stated that, if the Administration followed through on its threats to cease  
7 making the CSR payments or took other actions designed to undermine the ACA, Pennsylvania  
8 consumers could see rate increases as high as 36.3 percent.

9 11. Under the guidance issued on March 14, 2017 (as updated March 29, 2017), the  
10 Department was scheduled to announce final rates for the 2018 plan year the week of October 16,  
11 2017.

12 12. Three days before this deadline, on October 13, 2017, the Trump Administration  
13 announced that it was, in fact, going to stop making the CSR payments.

14 13. Faced with the knowledge that the Federal Government would no longer make the  
15 CSR payments, the Department was forced to approve substantially higher rates than insurers had  
16 originally submitted and would otherwise have been approved.

17 14. Specifically, in 2018, rates for the individual market will increase by an average of  
18 30.6 percent – significantly higher than the 7.6 percent statewide average increase that the  
19 Department otherwise would have approved.

20  
21 I declare under penalty of perjury that the foregoing is true and correct to the best of my  
22 knowledge, information, and belief.

23  
24   
25 SETH A. MENDELSON

26 Dated: October 18, 2017  
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