IN THE UNITED STATES COURT OF FEDERAL CLAIMS

DOUG OMMEN, *in his capacity as Liquidator of CoOportunity Health, Inc.*, and DAN WATKINS, *in his capacity as Special Deputy Liquidator of CoOportunity Health, Inc.*,	)	
Plaintiffs,	)	
v.	)	No. 17-CV-00957-CFL
	)	Judge Charles F. Lettow
THE UNITED STATES OF AMERICA,	)	
Defendant.	)	

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

Statutory Authorities

Rules and Regulations

Additional Authorities

Under Congressional pressure and faced with dramatically lower inflows than anticipated, the Department of Health and Human Services ("HHS") changed its position with regard to the statutorily required "risk corridors" payments it made to health insurers under the Affordable Care Act ("ACA"). Specifically, HHS elected to pay only a small portion of the overall funds due to insurers—a *pro rata* share based on revenue inflows to the program. When HHS went to make the reduced payments, it singled out CoOportunity—an insolvent nonprofit CO-OP formed under the ACA—and chose to pay it nothing. HHS claimed it was placing CoOportunity's funds in an "administrative hold," a legal fiction for which HHS admits it had no legal authority whatsoever. This motion for partial summary judgment seeks relief for only the *pro rata* percentage of risk corridors funds HHS already paid to other insurers, but illegally withheld from CoOportunity.[1] The *pro rata* amount of such funds HHS wrongfully held and refused to pay to CoOportunity for 2015 alone is approximately $16 million.

This Court is well versed in the "3R" programs of the ACA. *See generally Land of Lincoln Mut. Health Ins. Co. v. United States*, 129 Fed. Cl. 81 (2016). As this Court is also aware, varying decisions from the Court of Federal Claims regarding HHS's obligation to pay the full amount of risk corridors funds are currently pending before the Federal Circuit, which will ultimately resolve the question of whether HHS was required to pay risk corridors amounts to the extent they exceeded revenue inflows. To be clear, this motion in no way involves those issues; this motion can, and should, be resolved entirely independent of those cases.

This case involves amounts that HHS *already decided to pay*, and did pay to other insurers, but that it illegally withheld from CoOportunity. HHS's motive for holding CoOportunity's pro rata share of the 2014 and 2015 risk corridors distribution is obvious. If a timely payment had been made as required by HHS's own regulations, the funds would have

[1] Plaintiffs' Complaint seeks additional relief, which will be addressed in subsequent motions.

been used to pay Iowa and Nebraska policyholder claims in the pending CoOportunity liquidation, which have a well-established higher priority than Government claims under state insurance insolvency laws. HHS was well aware of policyholder priority from the inception of the ACA, because it determined that an insolvent CO-OP formed under the ACA should be liquidated like any other insurance company: under state insolvency laws that place policyholder claims at a higher priority than Government claims.

HHS illegally held CoOportunity's funds so they would be available to the Government—*and only the Government*—to improperly set off against CoOportunity's startup loan or any other obligation HHS may subsequently claim to be owed by CoOportunity. Thus, Plaintiffs, charged with liquidating CoOportunity according to Iowa law, have been damaged by the amount of funds withheld, which are in excess of $20 million.

The propriety of HHS's subsequent setoff of the funds illegally withheld is of no consequence to this motion. Although those set offs, too, were improper for a host of other reasons, the question of their propriety could not even have arisen if HHS had not implemented its illegal administrative hold in the first place. In fact, even if those subsequent setoffs *were* proper, HHS cannot be allowed to benefit from its illegal activity used to effectuate that setoff, while at the same time damaging the CoOportunity estate, its policyholders and creditors, as well as the states of Iowa and Nebraska.

STATEMENT OF THE CASE

In 2010, Congress passed the ACA, and the President signed it into law on March 23, 2010. As part of the ACA, Congress created the "Consumer Operated and Oriented Plans" (the "CO-OP" program), which established non-profit insurance companies to diversify options in purchasing health insurance. *See* 42 U.S.C. § 18042(a)(1)-(2). Congress conferred authority

over the CO-OP program and other relevant aspects of the ACA to the Secretary of HHS.[2] *See*, *e.g.*, 42 U.S.C. § 18042.

Under the ACA's CO-OP program, Congress authorized federal funding to create non-profit CO-OPs to offer qualified health insurance plans to individuals and small groups. *See* 42 U.S.C. § 18042(a)(1)-(2). In formulating regulations under which the CO-OPs would operate, HHS specifically noted that a CO-OP would be liquidated under state insolvency laws like any other insurance company.

In October 2011, CoOportunity[3] applied for federal funding under the CO-OP program, seeking to serve residents of Iowa and Nebraska. Declaration of Dan Watkins, ¶ 3 (attached hereto as Exhibit A and hereinafter "Watkins Decl."). HHS approved the funding request, and on February 17, 2012, the parties closed on a Loan Agreement to provide initial capital to CoOportunity, as envisioned by the ACA. *Id.* ¶ 4. CoOportunity first offered insurance plans during the "open enrollment" period beginning in October 2013 for coverage effective January 1, 2014. *Id.* ¶ 5. Like CO-OPs all across the country, CoOportunity struggled financially, losing $163 million in the first twelve months it offered policies. *Id.* ¶ 6. On February 28, 2015, the Polk County District Court (located in Des Moines, Iowa) ordered CoOportunity liquidated pursuant to the Iowa Insurance Company liquidation statutes. *Id.* ¶ 12.

I. The "3R" Programs: Reinsurance, Risk Corridors, and Risk Adjustment

In the ACA, "Congress established three stabilization programs, *see* 42 U.S.C. §§ 18061-18063, to mitigate the uncertainty and pricing risks for insurers, which programs have become commonly known as the 3R 'reinsurance,' 'risk corridors,' and 'risk adjustment,' respectively." *Land of Lincoln*, 129 Fed. Cl. at 89. Congress designed these programs to allow and encourage

[2] The Centers for Medicare & Medicaid Services ("CMS"), which is responsible for implementing the CO-OP program, is a part of HHS. *See* https://www.cms.gov/About-CMS/About-CMS.html.
[3] At that time, CoOportunity operated as "Midwest Members Health."

insurers to offer insurance to the previously uninsured population, because the programs—in theory—would compensate the insurers for taking increased risk.

This motion specifically involves amounts that HHS decided to pay (to other insurers but not CoOportunity) under the risk corridors program. This program "was designed to 'protect against uncertainty in rate setting for qualified health plans by limiting the extent of issuers' financial losses and gains.'" *Id.* (citing HHS Notice of Benefit and Payment Parameters for 2014, 78 Fed. Reg. at 15,411). Risk corridors is a temporary, three-year program, applying to policy years 2014, 2015, and 2016. 42 U.S.C. § 18062(a). The program allows HHS to "even out" the gains and losses of qualified health plans during those years. *Land of Lincoln*, 129 Fed. Cl. at 90. This Court accurately described the technical functioning of risk corridors as follows:

> When a qualified health plan issuer experiences a loss in a calendar year, such that the plan's "allowable costs" are more than 103 percent of the plan's "target amount" for that year, HHS is directed to pay the issuer a portion of that loss. 42 U.S.C. § 18062(b)(1); 45 C.F.R. § 153.510(b). Correlatively, when the issuer experiences a gain in a calendar year, such that the plan's "allowable costs" are less than 97 percent of the plan's "target amount" for that year, the issuer is directed to pay the HHS a certain amount of that gain. 42 U.S.C. § 18062(b)(2); 45 C.F.R. § 153.510(c).

Id.

Similar to risk corridors, the reinsurance program exists for only policy years 2014-2016. All insurers are required to make payments into the reinsurance fund. 42 U.S.C. § 18061(b)(1)(A)-(B). Then, if a specific insurer's costs exceed a threshold number, individual market issuers are eligible, up to a designated cap, for a reimbursement of funds. 42 U.S.C. § 18061(b)(1)(B).

Finally, the risk adjustment program is the only permanent program of the 3Rs. This program transfers funds from "low actuarial risk plans" to "high actuarial risk plans" within the same market within each state. 42 U.S.C. § 18063. HHS determines the "actuarial risk" for each

insurer. Then, HHS acts as a conduit for the incoming and outgoing required payments, which, theoretically, spread risk around the market. *Id.*; 45 C.F.R. § 153.310(a)(2).[4]

II. CoOportunity's State Insolvency Proceedings

Like many CO-OPs, CoOportunity experienced serious financial difficulty within several months of operations. *See* Watkins Decl. ¶ 6. HHS approved one request for additional funding, providing CoOportunity with an additional $32.7 million of solvency-loan funding in September 2014. *Id.* ¶ 7. Near the end of 2014, however, HHS denied a second request for funding. *Id.* ¶ 8.

On December 16, 2014 (the same day HHS rejected the second request), the Iowa Insurance Commissioner placed CoOportunity under a supervision order due to its hazardous financial condition. *See id.* ¶ 9; *see also* Iowa Code § 507C.9; Iowa Admin. Code §§ 191-110.1-.8. On December 23, 2014, at the Commissioner's request, the Polk County District Court placed CoOportunity in rehabilitation, appointing the Commissioner as "Rehabilitator." Watkins Decl. ¶ 10. On January 29, 2015, the Rehabilitator filed a Petition for Order of Liquidation. *Id.* ¶ 11. On February 28, 2015, the Polk County District Court entered the Liquidation Order and appointed Nick Gerhart as Liquidator and Daniel L. Watkins Special Deputy Liquidator.[5] *Id.* ¶ 13.

Under the Liquidation Order and Iowa Law, Plaintiffs must marshal all assets, wind down the company, and pay creditors in accordance with the priority for distribution in the Iowa Insurers Supervision, Rehabilitation and Liquidation Act ("Iowa Liquidation Act"), Chapter

[4] CoOportunity asked to be excluded from the 2015 risk adjustment calculation for numerous reasons including, *inter alia*, the fact that CoOportunity operated in 2015 at the request of HHS. HHS's systems could not handle an abrupt year-end or mid-month liquidation, and it requested that CoOportunity be liquidated at a month-ending date, settling on February 28, 2015. The arbitrary and capricious regulation, implementation, and application of risk adjustment against CoOportunity in 2015 are a separate count of Plaintiffs' Complaint and will be the subject of subsequent motions for summary judgment.

[5] On December 23, 2016, Doug Ommen succeeded Nick Gerhart as Liquidator of the CoOportunity estate.

507C of the Iowa Code. Liquidation Order ¶ 2 (attached to Watkins Decl. as Exhibit 3). The Liquidators are authorized to "take such other action as the nature of this cause and the interests of the policyholders, creditors or the public may require, subject to any further or necessary Orders of [the Iowa] Court." *Id.* ¶ 12. The Liquidators are charged with administering the "business and affairs of CoOportunity's estate under the general supervision of [the Iowa] Court." *Id.* ¶ 13.

As discussed in detail below, because federal law, federal regulations, state law, and HHS all dictated that an Iowa liquidation proceeding would govern any CO-OP insolvencies, CoOportunity filed its liquidation proceeding in the Polk County District Court, and the liquidation was to proceed according to Iowa law.[6] CoOportunity had no way of knowing at that juncture, however, that the Government would later abandon the law and recklessly administer the CO-OP program to the substantial detriment of CoOportunity and other CO-OPs.

III. HHS Decides to Pay Only A Portion of Risk Corridors Funds Due—and Illegally "Hold" CoOportunity's Payment Entirely.

The risk corridors program was first set to apply to policy year 2014, with payment to be made from HHS to eligible insurers in November 2015. *See Land of Lincoln*, 129 Fed. Cl. at 89-91. From the inception of the ACA until shortly before HHS was set to make these payments,

[6] *See, e.g.*, 42 U.S.C. § 18041(d) (stating, in a section titled "No interference with State regulatory authority": "Nothing in this title shall be construed to preempt any State law that does not prevent the application of the provisions of this title."); Proposed Rules, 45 C.F.R. Part 156, 76 Fed. Reg. 43237-01 (July 20, 2011) ("State law establishes a variety of required regulatory actions if an insurer's RBC [risk-based capital] falls below established levels or percent of RBC. These regulatory interventions can range from a corrective action plan to liquidation of the insurer if it is insolvent. Solvency and the financial health of insurers is historically a State-regulated function."); Final Rules, Responses and Comments, 45 C.F.R. Part 156, 76 Fed. Reg. 77392-01 at E.6 and F, Dec. 13, 2011 ("In the potential case of insurer financial distress, a CO-OP follows the same process as traditional insurers and must comply with all applicable State laws and regulations."); Loan Agreement ¶ 15.3(c) (attached to Watkins Decl. as Exhibit 1) (noting that in the event of default: "Borrower must immediately repay any unused Loan Funds to *Lender following the resolution of any outstanding debts and run out of outstanding claim obligations, consistent with State Insurance Laws.*" (emphasis added); Default Notice (attached to Watkins Decl. as Exhibit 2) ("We of course realize that the debts in question are otherwise subject to disposition under relevant provisions of Iowa law concerning liquidation proceedings.").

HHS maintained[7]—consistent with the statutory mandate that it "shall pay" the amounts prescribed by the statute—that it would make the full risk corridors payments irrespective of the amount of money brought in through the risk corridors program.[8]

In February 2015, HHS changed its mind regarding how it would pay risk corridors monies: it explained its intention to instead make payments in a budget-neutral fashion. In other words, HHS would pay the policy year 2014 outlays from risk corridors funds received for policy year 2014. In the event inflows were insufficient to cover the required 2014 payments, the 2015 inflows would first be applied to 2014 balances, and the same for 2016 inflows. Even as HHS made this announcement in February 2015, however, it still believed that risk corridors inflows would be sufficient. Indeed, in the *very same announcement* where it articulated the policy change, HHS stated: "HHS/CMS anticipates that Risk Corridors collections will be sufficient to pay for all Risk Corridors payments." *See* CMS FAX ID 8759, Pub'd 02/02/2015, *available at* https://www.regtap.info/faq_viewe.php?i=8759.

Unfortunately, HHS grossly miscalculated the amount of money it would collect from risk corridors for policy year 2014. It missed its projections so badly that it was able to pay carriers only 12.6% of the statutorily required payments. On October 1, 2015, HHS issued its official notice stating that payments to issuers would be reduced on a pro rata basis, and each carrier eligible to receive risk corridors funds for policy year 2014 would receive only 12.6% of

[7] *See, e.g.*, 78 FR 15409, 15473 (Mar. 11, 2013) ("The risk corridors program is not statutorily required to be budget neutral. Regardless of the balance of payments and receipts, HHS will remit payments as required under section 1342 of the Affordable Care Act."); HHS Notice of Benefit and Payment Parameters for 2015, 79 Fed. Reg. 13,744, 13,829 (Mar. 11, 2014) (nothing that the "risk corridors program is likely to be budget neutral or, will result in net revenue to the Federal government."); *Letter from Sylvia M. Burwell, Secretary, HHS, to U.S. Senator Jeff Sessions* (June 18, 2014) ("As established in statute … [QHP] plans with allowable costs at least three percent higher than the plan's target amount will receive payments from HHS to offset a percentage of those losses.").

[8] To reiterate, HHS' subsequent decision to reverse course and pay only a pro rata portion of the total amount owed (contrary to the statutory mandate) is *not* at issue in this motion. What is at issue are the pro rata payments that HHS *did* decide to make—at least, that is, to other carriers.

the amount due and owing. *See* CMS, *Risk Corridors Payment Proration Rate for* 2014 (Oct. 1, 2015), available at https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/Downloads/RiskCorridorsPaymentProration Ratefor2014.pdf. Thus, as CoOportunity was otherwise expecting to receive approximately $130 million in risk corridors for policy year 2014, HHS's shift to a pro rata payment reduced CoOportunity's anticipated risk corridors payment to approximately $16.38 million. Watkins Decl. ¶ 13.

Subsequently, HHS decided it was not going to pay *any* risk corridors funds to CoOportunity—not even the pro rata share, telling CoOportunity verbally in December 2015 that it was withholding all payments. *Id.* ¶ 14. Rather, HHS placed what it called an "administrative hold" on all payments due to CoOportunity, so that it could evaluate CoOportunity's status and have funds to pay itself—i.e., to set off—should CoOportunity subsequently accrue debts to HHS. To be clear: at the time HHS made the risk corridors payments, it did not set off any funds whatsoever. *See id.* ¶ 15. Rather, believing that there *could* be a debt it *could* set off in the *future*, HHS decided to withhold all payments to CoOportunity, effectively engaging in an illegal form of self-help that had the effect of circumventing the Iowa liquidation proceeding and priority interests of other creditors.

Eventually, HHS determined there was a debt that could, theoretically, offset the risk corridors payment to CoOportunity, and HHS unilaterally decided to set off that payment accordingly. At the time it did so, no notice or explanation whatsoever was provided to CoOportunity. *Id.* ¶ 16. In fact, to date, HHS has *never* provided CoOportunity with an accounting or any sort of explanation of which funds were used to set off the supposed debts. *Id.* ¶ 17. While HHS acknowledged to CoOportunity that it did effectuate a setoff, it refuses to disclose any details. *Id.* ¶ 18.

HHS's action to administratively "hold" CoOportunity's 12.6% risk corridors payment was illegal. The subsequent set off was also illegal for other reasons, but the fact that it was only effectuated by use of the illegal hold is sufficient alone to render it wrongful.[9] CoOportunity is therefore entitled to partial summary judgment on this discrete claim for $16.38 million, its *pro rata* share of 2014 risk corridors payments that all other carriers received from HHS.

ARGUMENT

I. HHS's "Administrative Hold" Was Illegal, and HHS Failed to Pay Money Owed to CoOportunity's Liquidation Estate.

A. Risk corridors is a money-mandating statute and regulation under which HHS refused to provide payment.

This Court has the authority to provide a monetary award to a party that did not receive a payment under a "money mandating" statute or regulation. *See, e.g.*, *Fisher v. United States*, 402 F.3d 1167, 1173 (Fed. Cir. 2005). A statute or regulation is "money mandating" when it "compels the government to make a payment to an identified party or group." *ARRA Energy Co. I v. United States*, 97 Fed. Cl. 12, 19 (2011). Here, there is little question that the risk corridors statute and regulation are money mandating. Indeed, the operative language indicates that, based on the formulas in the statute, "the Secretary ***shall pay***" the amount prescribed. 42 U.S.C. § 18062(b)(1) (emphasis added). Similarly, the risk corridors regulation states that the Secretary "will pay" the specified amounts. 45 C.F.R. § 153.510(b)(1)&(2); *see also* 76 FR 41929, 41943 (July 15, 2011); 77 FR 17219, 17238 (Mar. 23, 2012) (noting that the deadline for the Government to pay QHPs their payments under risk corridors "should be the same" as the

[9] HHS may attempt to justify its illegal hold based on the subsequent set off but that issue need not be addressed by the Court at this time. Part of that issue, if it ever needs to be addressed, will be whether full risk corridors payments are due all insureds. That issue is on appeal in the Federal Circuit at the present time and, notwithstanding Plaintiffs' objections to HHS' motion to stay this proceeding pending a resolution of that decision, Plaintiffs acknowledge the Court may choose to withhold ruling on that specific issue until the Federal Circuit issues its opinions.

deadline for QHPs to remit payments under the program, which is 30 days from calculation per 45 C.F.R. § 153.510(d)).

The legal effect of this "shall pay" and "will pay" language with respect to the *full* amount of risk corridors payments is not at issue here. Those issues are pending before the Federal Circuit in the *Land of Lincoln* and *Moda* cases, and any Federal Circuit decision will guide this Court when those issues present themselves in this case. At issue in this motion, however, is the amount that HHS expressly stated that it owed and that was payable—the 12.6% of 2014 risk corridors payments funded by revenue inflows. It is indisputable that HHS had an obligation to pay (at least) this 12.6% under a money mandating statute and regulation.

B. HHS has no legal basis for inventing and enforcing an "administrative hold" over CoOportunity's funds.

From the time CoOportunity first became aware that HHS implemented an "administrative hold" on all funds due to CoOportunity, it has asked the Government to provide a legal basis or authority for the "hold." HHS never provided an explanation. There is no authority to implement an administrative hold found in the text of the ACA, no federal regulation attendant to the ACA confers this power, and the contract language in the QHP and loan agreements between the parties does not recognize an administrative-hold authority.

Despite this complete lack of authority, HHS continued to implement this administrative hold against CoOportunity without providing any legal basis for doing so—in fact, so far as CoOportunity knows, the administrative hold remains in place today.

Eventually, CoOportunity's liquidators sued HHS in the United States District Court for the Southern District of Iowa, alleging, *inter alia*, that the administrative hold was improper wrongful and seeking an injunction barring its further use. HHS moved to dismiss that suit for

lack of subject matter jurisdiction, asserting that CoOportunity's claims were *de facto* claims for money damages that only this Court had jurisdiction to resolve.

The district court eventually granted that motion, which led to this case being filed in this Court. But, prior to doing so, the district court held a hearing on the Government's motion to dismiss. There, finally, the Government was asked to proffer its authority for the administrative hold it imposed:

> THE COURT: Can you point me to the statutory authority for your administrative hold?
>
> [COUNSEL]: There is no statutory authority for the hold.

Hearing Transcript of December 15, 2017, at 7:22-25 (attached hereto as Exhibit B and hereinafter "Tr."). After the Government then explained that the "administrative hold" is set up specifically to protect HHS against an insolvency process, the Court again pressed the Government on the functions it implements as part of this administrative hold:

> THE COURT: Those functions have to be explained somewhere. I asked you for the statutory authority. Are there any regulations about administrative holds that you can point me to?
>
> [COUNSEL]: No, not as far as I know.
>
> THE COURT: So there's no statutory authority and no regulations. When you just said there's 30 percent that goes to the Department of Treasury and that this is why this administrative hold exists, what -- where do we find that?
>
> [COUNSEL]: There are Treasury regulations, and I believe those would be in 31 CFR –
>
> THE COURT: I understand the Treasury regulations and the -- I understand that. Once it is referred there are regulations that govern that and -- but when you are holding it, what regulations do I look to to see that it is being held properly?
>
> [COUNSEL]: There are none that I am aware of.

Tr. at 8:11–9:2.

As HHS has now admitted on the open record, there is no statutory or regulatory basis for the implementation of an administrative hold. Because it had no legal authority to withhold CoOportunity's payment for the 2014 risk corridors, that payment of $16.38 million should have been directly and promptly paid to CoOportunity's liquidation estate in December 2015, along with all of the other QHP insurers. It is easy to see why HHS set things up in this way; CoOportunity was in the midst of a liquidation process in Iowa state court. Thus, HHS knew that if it paid funds to the estate and had a later debt come due from CoOportunity, it would be more difficult to get money out of the liquidation estate than it would to simply adjust an accounting entry at the U.S. Treasury. That said, HHS achieved this end through highly illegal means—withholding funds that were rightly the property of the liquidation estate (and the other creditors) without any legal basis for doing so.

HHS's illegal actions to keep funds out of the liquidation estate directly harmed the other creditors of the estate. Iowa liquidation laws, like all state insurance company insolvency states, give priority to policyholder-level claims over other creditors—including the federal government. *See* Iowa Code § 507C.42. Here, most of those claims are held by "guaranty associations" established by statute in Iowa and Nebraska. The guaranty-association statutory protection of policyholders provides that, in the event of an insurance-company liquidation, the guaranty associations will immediately step in and pay all policyholder claims so that individual insureds and healthcare providers are made whole. *See* Iowa Code § 508C.2. By statute, the guaranty associations step into the policyholders' shoes in the liquidation proceeding. *See* Iowa Code § 507C.42.

The guaranty associations pay these claims through collections from solvent health insurers within the state. Iowa Code § 508C.9. Contributing insurers may offset unreimbursed

guaranty-association assessments against their premium tax liability up to 20% of the amount of the assessment, for each of the five years following the assessment. Iowa Code § 508C.19. To the extent guaranty associations are distributed funds from a liquidation, member insurers receive a pro rata distribution *in place of* their tax credits. *See* Iowa Code § 508C.19. Thus, if the guaranty associations are not reimbursed through the liquidation, the states of Iowa and Nebraska—and their taxpayers—ultimately bear the loss.

The Court's analysis on this motion can—and should—stop here. The $16.38 million risk corridors payment is rightly property of the liquidation estate. If HHS believes that a later-owed debt gives it a right to some of those funds, then it must assert such a claim in CoOportunity's liquidation proceeding—just like all of the other creditors. In fact, HHS has filed a proof of claim in the Polk County District Court liquidation proceeding, and the funds it eventually took via set-off should have been part of that same claim.

HHS's wrongful withholding should be remedied by a judgment of $16.38 million payable to the CoOportunity liquidation estate. Further, because HHS has constantly refused to disclose the amount of funds in the "administrative hold" as well as the amounts and dates of the supposed setoffs, this Court should order HHS to provide an accounting from January 2015 to date, so the Court can determine the full amount due to the liquidation estate in addition to the $16.38 million CoOportunity knows about. HHS has no right, and had no right to effectuate its incorrect view of the law through unilateral self-help.

CONCLUSION

This Court should enter partial summary judgment in favor of Plaintiffs in the amount of $16.38 million and order HHS to produce an accounting of its "administrative hold" from January 2015 to the present.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on August 24, 2017, I filed a copy of the foregoing Notice of Voluntary Dismissal Without Prejudice via the Court's ECF system, which provided electronic notice to all counsel of record.

/s/ DOUGLAS J. SCHMIDT