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8
9 IN THE UNITED STATES DISTRICT COURT
10 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. 3:17-cv-05895-KAW

DECLARATION OF JOHN BERTKO,
F.S.A., MAAA ISO PLAINTIFFS'
APPLICATION FOR A TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE WHY A
PRELIMINARY INJUNCTION SHOULD
NOT ISSUE

1 I, John Bertko, do hereby declare:

2 1. I am an independent actuarial consultant working as the Chief Actuary
3 for Covered California, California's Health Benefit Exchange. I have worked in this
4 capacity for approximately 3-1/2 years. I previously served as the Director of
5 Special Initiatives and Pricing in the Center for Consumer Information and
6 Insurance Oversight at the Centers for Medicare and Medicaid Services until my
7 retirement on January 31, 2014. The facts stated herein are of my own personal
8 knowledge, and I could and would competently testify to them.

9 2. As the Chief Actuary, I am responsible for measuring the risk profile
10 of enrollees on California's Exchange and advising the Covered CA management
11 team on issues regarding the plans' development of premium, as well as
12 maintaining stability of the California market. As part of this process, I analyze
13 payments made to contracted health plan issuers in the form of Cost Sharing
14 Reduction payments from the federal government.

15 3. In the 2017 plan year, the expected total federal payment to health plan
16 issuers nationally, is approximately 8 billion dollars. California's share of this
17 expected payment is approximately 12 percent of the total, or about 960 million
18 dollars. For the remaining three months of 2017, the payment to California's health
19 plan issuers ought to be approximately 240 million dollars in federal funds.

20 4. The federal government stopped the Cost Sharing Reduction payments
21 for the remainder of the 2017 year, consequently, California's contracted health
22 plan issuers will not be able to receive the approximately 240 million dollars for the
23 remainder of the 2017 year.

24 5. The contracted health plan issuers are not able to adjust the 2017 plan
25 year rates to account for this loss of 240 million dollars. The issuers are still
26 required to provide all services under the Patient Protection and Affordable Care
27 Act.

1 Act, an obligation that will be unfunded for the remainder of the 2017 plan year.

2 6. The current contract between Covered California and its health plan
3 issuers would likely permit these losses to be built into the 2019 plan year rates.
4 This would be potentially catastrophic for the Exchange, its consumers and its
5 issuers, owing to the uncertainty of the manner in which this rate adjustment would
6 take place. As an actuary, I view the stability of the marketplace as one of the
7 primary drivers of managing risk and loss, and this uncertainty would have
8 cascading effects for years on California's Exchange.

9 7. As Chief Actuary for Covered CA, I frequently speak with plan
10 actuaries and they have voiced repeated worries about the status of federal Cost-
11 Sharing Reduction payments and how they should prepare their plan's Covered CA
12 premium projections. The constant uncertainty of whether or not a plan issuer
13 could rely on payments to be made from the federal government would need to be
14 built into the 2018 plan year rates to prevent insolvency or financial disruption of
15 many of the plan issuers. The Patient Protection and Affordable Care Act provided
16 stability by enshrining in law security of these payments.

17
18 I declare under penalty of perjury under the laws of the United States that the
19 foregoing is true and correct, and that this declaration was executed on October 20,
20 2017, in Pacific Grove, California.

21
22
23
24 _____
John Bertko, F.S.A., MAAA