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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.

23 **DONALD J. TRUMP, President of the United**  
24 **States; ERIC D. HARGAN, Acting Secretary**  
25 **of the United States Department of Health**  
26 **and Human Services; UNITED STATES**  
27 **DEPARTMENT OF HEALTH AND**  
28 **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

**SUPPLEMENTAL DECLARATION OF**  
**T. LOUIS GUTIERREZ, EXECUTIVE**  
**DIRECTOR, MASSACHUSETTS**  
**HEALTH INSURANCE CONNECTOR**  
**AUTHORITY ISO PLAINTIFFS'**  
**APPLICATION FOR A TEMPORARY**  
**RESTRAINING ORDER AND ORDER**  
**TO SHOW CAUSE WHY A**  
**PRELIMINARY INJUNCTION SHOULD**  
**NOT ISSUE**

1 I, T. Louis Gutierrez, hereby state the following:

2 1. I am the Executive Director at the Massachusetts Health Insurance Connector  
3 Authority (the "Health Connector").

4 2. I am over 18 years of age and am not a party to this action. The facts set forth in  
5 this declaration are based on my personal knowledge and my review of documents kept in the  
6 ordinary course of business by the Health Connector.

7 3. As stated in the initial declaration provided by Audrey Morse Gasteier, the Health  
8 Connector took a dual track approach to respond to the possibility that the federal government's  
9 payments to insurers to reimburse them for cost-sharing reductions ("CSR Payments") would not  
10 continue. Insurance carriers were asked to provide two sets of plans and associated rates for  
11 approval for Open Enrollment: one set based on the continuation of federal CSR Payments; and  
12 another set, increasing roughly 18 percent over what 2018 rates would have otherwise been for  
13 the plans at issue in order to compensate for losses which would occur as a result of non-payment  
14 of CSRs.

15 4. Since signing the original declaration, as a result of the federal government's  
16 announcement that it will cease federal CSR Payments, the Health Connector has determined that  
17 it will proceed with the higher set of rates for the 2018 plan year and begun to implement that  
18 determination.

19 5. In response to insurance carriers' impending loss of the CSR Payments for the  
20 remainder of the 2017 plan year, the Commonwealth expects that it will offset those losses,  
21 currently estimated to be \$27-28 million, at a significant financial cost to the Commonwealth's  
22 public fisc, although it is uncertain where those funds will come from. If the federal government  
23 were ordered to continue the CSR Payments for 2017 and made such payments, the  
24 Commonwealth would avoid the burden of spending resources exploring those options, the  
25 financial cost of the offset, and the diversion of those funds from other public needs.

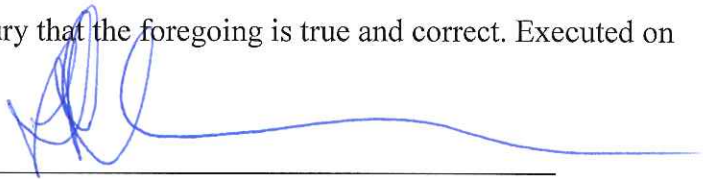
26 6. If an injunction were entered requiring CSR Payments, the Health Connector  
27 would take appropriate action to ensure that the restored funding is used to ensure and maximize  
28 the stability of the Commonwealth's insurance market, including exploring options for adopting

1 the lower set of rates for the 2018 plan year as quickly as is operationally feasible or otherwise  
2 returning the value of CSR Payments to Massachusetts consumers through rebates or other  
3 mechanisms.

4 7. Further, an injunction would provide the Health Connector with guidance in its  
5 efforts to prepare for the 2019 plan year, which begin as early as January 2018.

6 8. The cutoff of the CSR Payments has caused meaningful burden and harm to the  
7 Health Connector and will cause harm to Massachusetts residents unless enjoined. An injunction  
8 ordering the federal government to make the CSR Payments would alleviate immediate harm in  
9 the 2017 plan year and allow the Health Connector to explore options for further alleviating harm  
10 relating to the 2018 plan year and beyond.

11 I declare under penalty of perjury that the foregoing is true and correct. Executed on  
12 October 20, 2017.



14 T. Louis Gutierrez

15 Executive Director

16 Massachusetts Health Insurance Connector Authority

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