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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. 3:17-cv-05895-VC

**SECOND DECLARATION OF TK KEEN
ISO PLAINTIFFS' APPLICATION FOR
A TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT ISSUE**

1 I, TK Keen, hereby declare and affirm as follows:

- 2 1. I am over the age of 18 and competent to testify.
- 3 2. I am the Deputy Administrator for the Division of Financial Regulation of the
4 Oregon Department of Consumer & Business Services (“DCBS”). As such, I am
5 responsible for insurance regulation, including the product regulation, policy,
6 consumer education and advocacy, compliance and enforcement sections of the
7 division. These duties encompass the area of health insurance subject to regulation
8 by the State of Oregon. I have personal knowledge of the matters stated herein.
- 9 3. As I explained in my first Declaration, as a result of the Executive Order ending
10 cost sharing reduction (“CSR”) subsidies, DCBS has had to allow insurers
11 providing coverage under the Patient Protection and Affordable Care Act (“ACA”)
12 a rate increase. For the plan that drives costs in the market, our second-lowest cost
13 Silver tier plan, the premium rate increase for 2018 will be 7.1 percent. To be
14 clear, the cause of this increase from previously calculated rates is the assumption
15 that, based on the Executive Order, CSR payments will not be made in 2018. The
16 rate of increase was calculated through an actuarial determination taking into
17 account information provided by Oregon carriers, along with data provided by the
18 Congressional Budget Office and our independent actuarial consulting firm.
- 19 4. If the Court were to rule in October 2017 that CSR payments were required, DCBS
20 could recalculate 2018 rates and, potentially, rescind the increase. However, this
21 would require the cooperation of the federal Centers for Medicare and Medicaid
22 Services (“CMS”). Our 2018 rates have already been loaded into the CMS
23 information technology system. To change those rates would require CMS to
24 reopen the system to allow Oregon to reload 2018 rates. I do not know whether
25 CMS has the technological capability to do so or whether, absent a Court order
26 requiring CMS to reopen 2018 rates, CMS would have the willingness to do so.
- 27 5. In early 2018, DCBS will start working on determining the 2019 premium rates for
28 insurers providing coverage under the ACA. We therefore need to know whether

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to include the CSR payments in the rate structure. It is important in the health insurance market to have stability and predictability. An order from the Court reinstating CSR payments could provide both. Uncertainly in whether the payments will damages the marketplace and may reduce the willingness of insurance companies to provide ACA coverage.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on October 20, 2017.


TK KEEN