

# EXHIBIT A

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10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA  
 12 SAN FRANCISCO DIVISION

14 THE STATE OF CALIFORNIA, et al.,

15 Plaintiffs,

16 v.

18 DONALD J. TRUMP, et al.,

19 Defendants.

No. 3:17-cv-05895-VC

**BRIEF OF COUNTY OF SANTA CLARA  
 AS AMICUS CURIAE IN SUPPORT OF  
 PLAINTIFFS’ MOTION FOR  
 TEMPORARY RESTRAINING ORDER**

Date: October 23, 2017  
 Time: 2:00 p.m.  
 Dept.: Courtroom 2 - 17th Floor  
 Judge: Hon. Vince Chhabria

22 **I. INTRODUCTION**

23 Pursuant to this Court’s Orders dated October 18 and 19, 2017 (Dkt. Nos. 22, 26), the County  
 24 of Santa Clara (“the County”) files this brief as *amicus curiae* in support of Plaintiffs’ Ex Parte  
 25 Motion for Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction  
 26 Should Not Issue (Dkt. No. 10). As both an insurer participating in California’s health insurance  
 27 marketplace under the Affordable Care Act (“ACA”) and a public safety net health care provider, the  
 28 County has a significant interest in the resolution of this case. The County owns and operates Valley

1 Health Plan (“VHP”), which participates in Covered California, California’s health insurance  
2 marketplace for individuals and families under the ACA. As an insurer in Covered California, VHP  
3 receives cost-sharing payments pursuant to the Affordable Care Act.

4 The County also owns and operates Santa Clara Valley Medical Center (“SCVMC”), a fully  
5 integrated and comprehensive public health care delivery system that provides critical health care to  
6 residents of Santa Clara County regardless of their ability to pay. SCVMC, which includes a 529-bed  
7 Level 1 trauma hospital, is the only public safety net health care provider in Santa Clara County, and  
8 the second largest such provider in the State of California.

9 The County joins Plaintiffs’ arguments on the merits that the Executive Branch is required to  
10 make the Affordable Care Act’s cost-sharing reduction payments, and that the President is violating  
11 his obligations under the Take Care Clause, and it does not repeat those arguments here. The County  
12 writes separately to explain briefly that as both an insurer and a public safety net health care  
13 provider, it will be harmed in the absence of preliminary relief, and that the harms that will ensue are  
14 not limited to the dollar amount of the withheld cost-sharing reduction payments.

## 15 **II. ARGUMENT**

16 As both an insurer entitled to the ACA’s cost-sharing reduction payments and a public safety  
17 net health care provider, the County (and its residents) will be harmed in the absence of preliminary  
18 relief.

19 First, as an insurer, the County will be denied the cost-sharing reduction payments to which it  
20 is entitled. The County’s Valley Health Plan has more than 7,000 participants who are insured  
21 through Covered California.<sup>1</sup> As explained in Plaintiffs’ Memorandum of Points and Authorities, the  
22 ACA’s subsidies that reduce the cost of obtaining and utilizing health care coverage for lower  
23 income individuals and their families are paid directly to insurers. (Pls.’ MPA 5-6 (Dkt. No. 10-2).)  
24 Under the ACA, since January 2014, VHP has been receiving premium tax credits under 26 U.S.C.

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27 <sup>1</sup> See Mem. From Paul E. Lorenz, Chief Executive Officer, SCVMC, to County of Santa Clara  
28 Health and Hospital Committee Re: SCVMC Operational, Financial, and Quality Report 36 (Packet  
Page 52) (Oct. 11, 2016), at  
<http://sccgov.iqm2.com/citizens/FileOpen.aspx?Type=1&ID=8705&Inline=True>.

1 § 36B that reduce monthly insurance premiums for eligible individuals, as well as cost-sharing  
 2 reduction payments for qualified individuals. The ACA requires VHP to provide cost-sharing  
 3 reductions to individuals who are eligible to receive premium tax credits, whose household income  
 4 is below 250% of the federal poverty level, and who are enrolled in a “silver” plan offered by VHP.  
 5 42 U.S.C. § 18071(b), (c)(2), (f)(2). As an insurer, VHP is obligated under the ACA to absorb the  
 6 cost-sharing reduction costs, even if the federal government does not reimburse it. *See* 42 U.S.C.  
 7 §§18021(a)(1), 18022(a)(2), 18071(a)-(c). In September 2017, pursuant to the ACA, VHP received  
 8 approximately \$448,000 in cost-sharing reduction payments. It has not received the payment it is  
 9 owed for October 2017. *See County of Santa Clara v. Trump*, 250 F. Supp. 3d 497, at 537 (N.D. Cal.  
 10 2017) (holding that the “risk of losing millions of dollars in federal funding” constitutes irreparable  
 11 harm).

12 Second, even if the County ultimately could recover under the Tucker Act the monetary  
 13 value of the cost-sharing reduction payments, the harm to the County and its residents if preliminary  
 14 relief is not granted will extend beyond the dollar amount of the cost-sharing reduction payments.  
 15 Ending cost-sharing reduction payments will destabilize the individual insurance markets by forcing  
 16 insurers to significantly raise premiums. Without the cost-sharing reduction payments, VHP’s Silver  
 17 Plan premium rate is set to increase in 2018 by approximately 12%.<sup>2</sup> The County anticipates that  
 18 rising premiums will cause more individuals to forgo health insurance coverage entirely, including  
 19 those who purchase insurance through Covered California but do not qualify for premium tax credits  
 20 or for Medi-Cal, California’s Medicaid program, because of their incomes. The County also expects  
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 23 <sup>2</sup> Covered California, Covered California’s Health Insurance Companies and Plan Rates for 2018,  
 24 *Preliminary Rates* 45 (Aug. 1, 2017), at  
 25 [https://www.coveredca.com/news/PDFs/CoveredCA\\_2018\\_Plans\\_and\\_Rates\\_8-1-2017.pdf](https://www.coveredca.com/news/PDFs/CoveredCA_2018_Plans_and_Rates_8-1-2017.pdf) (listing  
 26 12% “Potential CSR Surcharge” for Silver tier); Valley Health Plan, Covered California Plans, at  
 27 <https://www.valleyhealthplan.org/sites/m/shop/Pages/coverca.aspx> (updated Oct. 13, 2017); *see*  
 28 Valley Health Plan, 2018 Preliminary Covered California Monthly Premiums with CSR Funding, at  
<https://www.valleyhealthplan.org/sites/m/shop/Documents/Monthly%20Premiums%202018%20with%20CSR.pdf>;  
 Valley Health Plan, 2018 Preliminary Covered California Monthly Premiums  
 Without CSR Funding, at  
[https://www.valleyhealthplan.org/sites/m/shop/Documents/\(PRELIMINARY\)%202018%20VHP%20Monthly%20Premium%20Rates%20without%20Subsidies%20-%20by%20Age%20without%20Cost%20Share%20Reductions.pdf](https://www.valleyhealthplan.org/sites/m/shop/Documents/(PRELIMINARY)%202018%20VHP%20Monthly%20Premium%20Rates%20without%20Subsidies%20-%20by%20Age%20without%20Cost%20Share%20Reductions.pdf).

1 that reduced participation in the insurance marketplace will lead to an increase in the number of  
 2 uninsured people in Santa Clara County, which will likely impose increased costs on the County as  
 3 the public safety net health care provider.

4 SCVMC provides uncompensated health care services to those who do not have health  
 5 insurance. The mission of SCVMC, the only public safety net health care provider in Santa Clara  
 6 County, is to “[p]rovide high quality, cost-effective medical care to all residents of the County  
 7 regardless of their ability to pay.”<sup>3</sup> To fulfill this mission, the County also provides programs to  
 8 subsidize medical care for patients who lack insurance and need hospital, specialty, and primary care  
 9 services. *See, e.g.*, Cal. Welfare & Inst. Code § 17000. The County’s uninsured patient population is  
 10 expected to increase if existing Covered California patients become uninsured and seek care at  
 11 SCVMC because it is a safety net provider. This would directly increase the County’s costs of  
 12 providing uncompensated health care services.

### 13 **III. CONCLUSION**

14 For the reasons above and in Plaintiffs’ Motion and accompanying documents, the County  
 15 requests that the Court grant Plaintiffs’ Motion.

16  
 17 Dated: October 20, 2017

Respectfully submitted,

JAMES R. WILLIAMS  
 COUNTY COUNSEL

19  
 20 By: /s/ Julie Wilensky  
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 22 Attorneys for *Amicus Curiae* COUNTY OF  
 SANTA CLARA

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 27 <sup>3</sup> Santa Clara Valley Medical Center, Our Mission, at  
 28 <https://www.scvmc.org/about/Pages/missionstatement.aspx> (accessed Oct. 20, 2017); Santa Clara  
 Valley Medical Center, About Us, at <https://www.scvmc.org/about/Pages/default.aspx> (accessed  
 Oct. 20, 2017).