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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO/OAKLAND DIVISION**

THE STATE OF CALIFORNIA; THE STATE OF CONNECTICUT; THE STATE OF DELAWARE; THE DISTRICT OF COLUMBIA; THE STATE OF ILLINOIS; THE STATE OF IOWA; THE COMMONWEALTH OF KENTUCKY; THE STATE OF MARYLAND; THE COMMONWEALTH OF MASSACHUSETTS; THE STATE OF MINNESOTA; THE STATE OF NEW MEXICO; THE STATE OF NEW YORK; THE STATE OF NORTH CAROLINA; THE STATE OF OREGON; THE COMMONWEALTH OF PENNSYLVANIA; THE STATE OF RHODE ISLAND; THE STATE OF VERMONT; THE COMMONWEALTH OF VIRGINIA; and THE STATE OF WASHINGTON,

Plaintiffs,

v.

DONALD J. TRUMP, President of the United States; ERIC D. HARGAN, Acting Secretary of the United States Department of Health and Human Services; UNITED STATES DEPARTMENT OF HEALTH AND 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.

NO. 4:17-cv-05895-KEW

DECLARATION OF:  
Boris Shekhter, FSA, MAAA  
Actuarial Director

1 I, Boris Shekhter, declare as follows:

- 2 1. I am over the age of 18 years of age, have personal knowledge of all facts and  
3 matters herein, and am competent to testify to the matters below.
- 4 2. I am the Actuarial Director of Kaiser Foundation Health Plan, Inc. (“KP  
5 California Regions”), where my responsibilities include decision-making  
6 regarding KP California Regions’ rate filings with the California Department of  
7 Managed Health Care and the incorporation of Cost-Sharing Reduction (CSR)  
8 payments into rate-setting. The information in this declaration is specific to our  
9 California operations and does not include Hawaii.
- 10 3. Kaiser Permanente is an integrated health system that provides care and  
11 coverage for nearly 12 million members in eight states and the District of  
12 Columbia. Each day, more than 200,000 dedicated employees and  
13 approximately 22,000 Permanente Medical Group physicians come to work at  
14 Kaiser Permanente to care for our members and deliver on our commitment to  
15 improving the health of the 65 million people living in the communities we  
16 serve.
- 17 4. In the State of California, the KP California Regions have approximately 8.5  
18 million members, who are served by approximately 164,000 employees and  
19 physicians. The California Regions participated in the individual market before  
20 the Affordable Care Act (“ACA”) took effect – and we continue to do so. Over  
21 600,000 of our nearly 12 million members receive coverage and care from  
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1 Kaiser Permanente through ACA's health insurance exchanges, 380,000 of  
2 them in The State of California.

3 5. Political, regulatory, and financial uncertainty has driven higher premiums and  
4 fewer choices for consumers. The KP California Regions expect the President's  
5 decision to stop Cost-Sharing Reduction (CSR) payments will contribute to the  
6 destabilization of the market, leading to higher premiums and further threaten or  
7 impair consumer choice.

8  
9 6. The ACA requires any health plan issuer that participates on the Exchange to  
10 offer at least one Silver and one Gold plan. When an issuer offers a Silver plan,  
11 the ACA also requires that three Silver plan variations also be offered. These are  
12 the plans in which individuals entitled to a CSR subsidy are enrolled.  
13 Consequently, any issuer that participates in the Exchange must offer at least one  
14 set of these Silver plan variations for which CSR payments will be received.

15  
16 7. CSR payments are an important subsidy, provided by the ACA, to help low-  
17 income people manage deductibles and out-of-pocket costs. The law requires  
18 health plans to offer Silver plan coverage to individuals with incomes up to  
19 250% of the federal poverty level with discounted out-of-pocket costs (co-  
20 payments and co-insurance) and deductibles. In turn, the ACA directs the  
21 federal government to make CSR payments to the health plan issuers to support  
22 the mandated reduced rates.  
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- 1 8. In the State of California, the KP California Regions have 144,000 members  
2 who are supported by CSR payments and 200,000 members who are on an on-  
3 Exchange Silver Plan, which is the type of plan supported by CSR payments.  
4
- 5 9. The KP California Regions estimated that they will receive CSR payments of  
6 \$73.5 million in 2018.
- 7 10. In the event the 2018 CSR payments are not made, the KP California Regions  
8 expects that they will need to raise premiums to cover the expected payments  
9 from the federal government to support low income members.
- 10 11. Because of the uncertainty over whether the federal government would make  
11 CSR payments, the KP California Regions have identified two sets of rates for  
12 2018 – what we would charge consumers if the CSR payments are made and  
13 what we will be forced to charge if the CSR payments are not made.  
14
- 15 12. The average 2018 rate increase for a KP California Regions Covered CA  
16 Exchange member on a Silver Plan if CSR payments are continued is 6.7%.
- 17 13. The average 2018 rate increase for a KP California Regions Covered CA  
18 Exchange member on a Silver Plan if CSR payments are not made is 22.3%.
- 19 14. We have received regulatory guidance to implement the higher Silver Plan  
20 premiums as described in paragraph 13, and those rates will be presented at Open  
21 Enrollment for 2018.
- 22 15. The ACA requires that the same rates be charged for all on-Exchange Silver Plan  
23 members. Raising the rates for Silver plans offered through the Exchange,  
24 therefore, will increase the rates charged for approximately 9,000 individuals who  
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1 are enrolled in a Silver Plan and who do not receive any federal subsidy to defray  
2 the cost of their coverage and/or care.

3 16. Due to the delay in rate approval, we have had to manage considerable  
4 administrative difficulties and expenses:

5 a. We designed and coded alternate rate sheets, benefit tables, Evidences of  
6 Coverage and related material. In addition to the double the work for filing  
7 rates, we doubled the work in our entire go-to-market effort.

8 b. Our on-line sales tools are likely to be live the first day of open enrollment, but  
9 there continue to be business risks and quality assurance has not yet been  
10 completed.

11 c. We will not have paper applications for individuals to use at the start of Open  
12 Enrollment. The only way to apply will be on-line, by telephone, or through  
13 Covered California.

14 d. Delayed rate decisions mean we will not have account change forms available  
15 for Open Enrollment. The only way to move to a new, off-exchange plan will  
16 be by telephone.

17 e. Broadly, we expect significant customer service challenges during the first  
18 week or two of Open Enrollment, driven by extremely high call volumes.

19 Members will be confused by the media, upset at the rate increase, and will  
20 generally seek answers.  
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1 17. The California Regions will continue to work in partnership with the state  
2 legislature and The California Department of Managed Health Care to find  
3 ways to provide high-quality, affordable health care in the State of California.  
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5 I affirm under penalty of perjury that the foregoing is true and correct to the best of my  
6 knowledge and belief.

7 DATED this 17th day of October 2017, at Oakland, California.  
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Boris Shekhter, FSA, MAAA  
11 Actuarial Director  
12 Small Group and Individual Plans  
13 Kaiser Foundation Health Plan  
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