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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. 4:17-cv-05895-KAW

DECLARATION OF MARIA T. VULLO,
SUPERINTENDENT OF THE NEW
YORK STATE DEPARTMENT OF
FINANCIAL SERVICES, ISO
PLAINTIFFS' APPLICATION FOR A
TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE WHY A
PRELIMINARY INJUNCTION SHOULD
NOT ISSUE

1 MARIA T. VULLO, declares under penalty of perjury, pursuant to 28 U.S.C. §
2 1746, that the following is true and correct:

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4 1. I am the Superintendent of the New York State Department of Financial
5 Services (DFS), and submit this Declaration in support of Plaintiffs' Application for
6 a Temporary Restraining Order and Order to Show Cause Why a Preliminary
7 Injunction Should Not Issue.

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9 2. DFS, among other responsibilities, regulates commercial accident and health
10 insurers, non-profit health services corporations, and health maintenance
11 organizations (collectively referred to as "Health Plans") and ensures their
12 compliance with New York law and federal law including the applicable provisions
13 of the Patient Protection and Affordable Care Act ("ACA"). Some of DFS's most
14 important responsibilities include overseeing the solvency of Health Plans,
15 reviewing and approving health insurance plan premium rates and adjustments, and
16 ensuring that Health Plans pay consumer claims for covered benefits as they
17 become due.

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21 3. Health Plans offer a variety of products in New York, including Qualified
22 Health Plans ("QHPs"), through the New York State of Health ("NYSoH" or
23 "Marketplace"), New York State's Official Health Plan Marketplace established
24 pursuant to the ACA.

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27 4. In just six years, the ACA has succeeded in providing lower cost, higher
28 quality coverage to millions of individuals and businesses in New York. Since the

1 ACA's implementation, New York's uninsured rate has dropped by approximately
2 50%, reducing the number of uninsured New Yorkers from approximately 10% to
3 5%. Under the ACA, approximately 4 million New Yorkers have received new
4 coverage through our Marketplace – 227,796 of these enrollees are in Qualified
5 Health Plans in the individual market. In addition, commercial health insurance
6 premiums for individuals remain over 50% less costly in 2017 than they would
7 have been without the ACA. Federal tax credits further reduce the cost of coverage
8 to consumers. Equally importantly, the ACA's Cost Share Reduction (CSR)
9 provisions reduce out-of-pocket expenses, such as deductibles and copayments, to
10 make coverage even more affordable to the consumer which helps to make the
11 market competitive and robust as well as providing health care options for all New
12 Yorkers.

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17 5. Specifically, CSRs decrease out-of-pocket costs such as deductibles and co-
18 payments for individuals who enroll in silver level Marketplace plans and have
19 household incomes at or below 250% of the federal poverty level. By law, Health
20 Plans must provide CSRs to their members, regardless of whether the CSRs are
21 funded by the federal government. All CSR payments have been made through
22 September 2017. In New York, not including the Basic Health Plan, 65,000
23 individuals in 2017 were eligible for CSRs through QHPs, reducing these New
24 Yorkers' collective cost-sharing responsibilities by approximately \$13.5 million.
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1 6. CSRs are an important component of the ACA's integrated requirements to
2 ensure that all New Yorkers, including those with limited means, can purchase
3 health insurance and that New York's Health Plans receive all of the amounts to
4 which they are entitled under the ACA. The loss of CSR payments will result in an
5 unnecessary disruption to the highly functioning and successful NYSoH, and to the
6 New York insurance market overall. New York has enjoyed unquestionable
7 success with the NYSoH Marketplace. As noted, in 2017, more than 4 million New
8 Yorkers – about 21 percent of the State's population – are enrolled in
9 comprehensive and affordable coverage through the Marketplace.
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13 7. The immediate termination of CSR payments will impact Health Plans
14 which, in 2016, anticipated that they would receive CSR payments throughout 2017
15 and based premium rate requests on this reasonable assumption. Furthermore, for
16 the 2018 plan year, the threat and now reality of termination of CSR payments has
17 already caused a premium rate increase in New York's QHP market of
18 approximately 1.5% of the average cost of a silver level Marketplace plan. Unless
19 these CSR payments are made, this situation will lead to increased premiums, more
20 New Yorkers losing their health insurance as the insurance becomes unaffordable,
21 and market instability.
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25 8. As a result of these premium increases, healthy individuals will be more
26 likely to forego coverage, compared to sick individuals. If healthy individuals
27 leave the market, the remaining unhealthy individuals will be a larger portion of the
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1 insured population. The disproportionate share of unhealthy individuals will
2 further cause premiums to increase. Moreover, the failure of the federal
3 government to fund CSR payments will create the risk that health insurers will
4 choose to exit markets impacting competition, in addition to the risk of significant
5 premium increases for those who choose to sell products.
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8 9. On a yearly basis, all New York Health Plans must apply for and receive
9 prior approval from DFS of premium rates for all commercial individual and small
10 group insurance policies, as well as community rated large group policies. DFS
11 carefully reviews the Health Plan rate applications and underlying calculations,
12 including the cost of medical care, member utilization of medical services,
13 administrative expenses and profit. Under the law, DFS may disapprove or modify
14 an insurer's request for a premium rate increase if it is unreasonable, excessive,
15 inadequate, or unfairly discriminatory.
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18 10. Health Plans' proposed rates are based, in part, on actuarial assumptions
19 about market conditions and third party funding sources during the relevant rating
20 period. If the third party funding sources change after proposed rate increases are
21 submitted by Health Plans and reviewed by DFS, the underlying actuarial
22 assumptions will likely be incorrect. The consequences of incorrect underlying
23 actuarial assumptions can be serious for consumers and Health Plans alike.
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26 11. The amount of CSR payments that QHPs expect to receive is an important
27 actuarial assumption regarding expected third party funding sources that impacts
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1 Health Plan rate requests and DFS's decisions. The Health Plan rates currently in
2 effect for the 2017 plan year – the current plan year – are based on the assumption
3 that all of the CSR payments for this year will be made. If the federal government
4 does not reimburse Health Plans for CSRs for the remainder of 2017, as currently
5 threatened, Health Plans' rates will be inadequate and cause financial loss.
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8 Moreover, because the administration has stated that it will stop CSR payments
9 before the end of this year, the consequences will be even more significant for
10 Health Plans, markets, consumers and DFS, as there is likely no mechanism other
11 than federal funding for the CSR funding to be replaced for the remainder of 2017.

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13 And, the failure to guarantee these payments in the future, as noted above, has
14 already caused premium increases, and this continued situation will cause greater
15 instability to the markets causing harm to all participants.
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17 12. DFS's regulatory burden will increase under any scenario in which CSR
18 payments are terminated. This increased burden will require hundreds of additional
19 hours of work from state employees.
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13. I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 17, 2017



Maria T. Vullo
Superintendent of Financial Services