

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

COMMON GROUND HEALTHCARE  
COOPERATIVE,

Plaintiff,  
on behalf of itself and all others  
similarly situated,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

No. 1:17-cv-00877-MMS  
(Judge Sweeney)

**PLAINTIFF COMMON GROUND HEALTHCARE COOPERATIVE'S  
MOTION FOR APPROVAL OF PROPOSED NOTICE PLAN**

## **PRELIMINARY STATEMENT**

Pursuant to the Court's order (Dkt. No. 17) granting class certification as to the Risk Corridors Class (the "Class") and setting a deadline for the submission of a proposed notice plan, Plaintiff Common Ground Healthcare Cooperative ("Plaintiff") respectfully submits this proposed plan for providing Notice to members of the Class. Plaintiff submits this motion before the February 12, 2018 deadline in order to facilitate expeditious to the Class, once Defendant the United States of America ("Defendant") provides potential Class members' contact information to Class Counsel on or before February 2, 2018.

### **I. FORM OF NOTICE**

Plaintiff's proposed "Notice" is designed to provide potential members of the class with all information required to be disclosed by RCFC 23(c)(2), including: "(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will include in the class any member who requests inclusion; (vi) the time and manner for requesting inclusion; (vii) the binding effect of a class judgment on members under RCFC 23(c)(3)." In addition, the proposed Notice is "written in plain, easily understood language that concisely and clearly provides potential class members" with the required information, *King v. United States*, 84 Fed. Cl. 348, 350 (2008) (internal quotations omitted), and is "objective and neutral." *Babbitt v. Albertson's, Inc.*, No. 92-1883, 1993 WL 150300, at \*4 (N.D. Cal. March 31, 1993). Attached as Exhibit 1 for the Court's consideration is the proposed Notice and opt-in form.

### **II. DISTRIBUTION OF NOTICE**

Pursuant to the Court's order, Plaintiff understands that Defendant will provide Plaintiff with what it represents is the name and contact information for all potential Class members that

are within its possession and fall within the class definition certified by the Court:

All persons or entities offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2016 benefit year, and whose allowable costs in either the 2016 benefit year, as calculated by the Centers for Medicare and Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act). Excluded from the Class are the Defendant and its members, agencies, divisions, departments, and employees.

As detailed in the attached Declaration of Jennifer M. Keough (“Keough Decl.”) of JND Legal Administration LLC (“JND”), Plaintiff intends to provide Notice to potential Class members by:

- Sending a cover letter, notice, and opt-in form (“Notice Packet”) via Federal Express to each potential class member and the respective Chief Executive Officer (“CEO”), Chief Financial Officer (“CFO”), General Counsel, and person responsible for risk corridor receivables, if known, including a Federal Express return envelope;
- Sending a Notice Packet via electronic mail to the current or last known email address of each potential class member, based on the contact list provided by the Defendant;
- Creating an informational and interactive case-specific website on which the notices and other important Court documents are posted and where potential class members may opt into the class action online; and
- Making a dedicated team at JND available to provide information and service to the class members.

Keough Decl. ¶ 5.

Plaintiff proposes the following schedule for providing Notice to members of the putative Class:

- Class counsel, through JND, will distribute Notice via email and Federal Express within 20 days following approval by the Court of the notice and schedule.

- Putative members of the Class must return opt-in forms (either through the dedicated website or by returning a hard copy via mail, FedEx, UPS, or fax) no later than 60 days after Class counsel's deadline to distribute the Notice.
- Within 30 days after the deadline for opt-in forms, Class counsel will certify final membership in the Class by identifying the name of each member of the Class to the Court and providing to the Court and Defendant a copy of the opt-in form completed by each Class member and submitted to Class counsel.

### **III. SETTLEMENT ADMINISTRATION BY JND LEGAL ADMINISTRATION**

Plaintiff has retained JND to serve as class action administrator for Notice program. JND administers settlement of class actions and other major litigation and has operations centers in Denver, Minneapolis, and Seattle. Keough Decl. ¶ 2. JND has broad experience with all aspects of legal administration, and its team has designed and implemented notice programs in hundreds of cases. *Id.* JND drew upon its substantial experience to design the notice plan here and is committed to devote its full resources to providing the Class with timely and useful services in connection with the administration of Class membership and any money distributions in the future. *Id.* ¶¶ 2-5.

### **CONCLUSION**

For foregoing reasons, Plaintiff respectfully requests that the Court (a) approve the proposed form of direct mail notice and opt-in form attached hereto as Exhibit 1; and (b) approve the proposed program for dissemination of notice to putative Class members by means of direct mail via Federal Express and email, as described herein.

DATED: January 26, 2018

Respectfully submitted,

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

*s/ Stephen Swedlow*

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Attorneys for Plaintiff Common Ground  
Healthcare Cooperative and the Class

**CERTIFICATE OF SERVICE**

I certify that on January 26, 2018, a copy of the attached **PLAINTIFF COMMON GROUND HEALTHCARE COOPERATIVE'S MOTION FOR APPROVAL OF CLASS NOTICE PLAN** was served via the Court's CM/ECF system on all counsel of record.

*s/ Stephen Swedlow*

Stephen Swedlow

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

**If you offered Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2016 benefit year, and your allowable costs were more than 103 percent of your target amounts, you may opt-in to join a lawsuit.**

*A federal court authorized this Notice. This is not a solicitation from a lawyer.*

**THIS NOTICE MAY AFFECT YOUR RIGHTS; PLEASE READ CAREFULLY.**

**TO:** All persons or entities offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2016 benefit year, and whose allowable costs in the 2016 benefit year, as calculated by the Centers for Medicare and Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act), excluding the Defendant (United States) and its members, agencies, divisions, departments, and employees.

- This legal notice has been sent to you by order of a federal court. Please read this Notice carefully and fully. It tells you about the opportunity you now have to join a class action lawsuit that is currently pending before the court.
- The Court is neither encouraging nor discouraging individuals from joining this lawsuit. This notice is intended to advise you of the *Common Ground Healthcare Cooperative v. United States* risk corridors litigation and of your rights with respect to it. This includes, but is not limited to, the right to become a member of the Class or to do nothing and be excluded from the Class. **Please Note that this particular class action is different than many other class action lawsuits in the United States because, if you do nothing, you will not be able to participate in the lawsuit as a Class member.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS CLASS ACTION LAWSUIT:	
<b>ASK TO BE INCLUDED (OPT INTO THE CLASS)</b>	<p>Receive any risk corridor payments generated from this lawsuit, and be bound by its results.</p> <p>In order to join the Class, <b><i>you must</i></b> submit a Class Action Opt-In Notice Form electronically, by facsimile, by first-class mail, or by pre-paid delivery service. The Class Action Opt-In Notice Form must be submitted, faxed, postmarked, or delivered by <b><u>DATE</u></b>.</p>
<b>DO NOTHING</b>	<p>Get no benefits from the lawsuit. Keep rights to sue the United States separately.</p>

QUESTIONS? VISIT [WWW.RISKCORRIDORSCLASSACTION.COM](http://WWW.RISKCORRIDORSCLASSACTION.COM) OR CALL 1-844-702-7325.

- Your rights and options, and the deadlines to exercise them, are explained in this notice.

**What This Notice Contains**

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**I. Basic Information**

**1. Why did I receive this notice?**

You have been mailed this notice because government records show that you offered one or more Qualified Health Plans (“QHPs”) under the Patient Protection and Affordable Care Act (“Affordable Care Act”) in the 2016 benefit year, and that your allowable costs in the 2016 benefit year, as calculated by the Centers for Medicare and Medicaid Services, were more than 103 percent of your target amounts (as those terms are defined in the Affordable Care Act).

The purpose of this notice is to inform you of a class action lawsuit regarding unpaid risk corridor amounts for those two benefit years, to advise you of how your rights may be affected by this lawsuit, and to inform you how you can join or “opt in” to the lawsuit if you choose to do so. The class action lawsuit is called *Common Ground Healthcare Cooperative v. United States*, Case No. 17-877 C. This lawsuit is pending in the United States Court of Federal Claims.

**2. What is this lawsuit about?**

Plaintiff Common Ground Healthcare Cooperative claims that Defendant United States has not fully paid the risk corridors payments for 2016 to which it and other insurers such as your organization are entitled under the Affordable Care Act. Section 1342 of the Affordable Care Act established a risk corridors program that applied to insurers who offered QHPs on the Affordable Care Act’s insurance exchanges in any of the 2014, 2015, or 2016 plan years. The risk corridors program provided that QHP issuers would receive compensation from the United States if their losses exceeded a certain defined amount due to higher-than-expected utilization and medical costs for the issuer’s insureds. At the same time, the risk corridors program provided that QHP issuers would pay the government a percentage of any unexpectedly high profits they made over similarly-defined amounts. During 2014, QHPs collectively incurred almost \$2.9 billion in compensable losses under the risk corridors program. Similarly, QHPs also incurred substantial compensable losses in 2015, totaling about \$5.8 billion, and again incurred approximately \$3.95 billion in compensable losses in 2016.

In appropriations acts for 2015, 2016, and 2017, Congress prohibited the Centers for Medicare &



Medicaid Services (“CMS”) and the United States Department of Health & Human Services (“HHS”) from making risk corridor payments from funds appropriated under those acts. HHS and CMS adopted a “budget neutral” approach to the program in which only risk corridor collections from QHP issuers would be used to make risk corridor payments out to other QHP issuers. HHS also stated that distributions under the risk corridor program would be reduced pro rata to the extent of any shortfall. As a result of this budget neutral approach (which Plaintiff contends in this lawsuit violates the Affordable Care Act), QHP issuers received only 12.6% of the amounts owed to them under the risk corridors program for the 2014 plan year, representing a \$2.5 billion shortfall. Collections from the 2015 and 2016 plan years were even less, and HHS used collections from that year to pay QHP issuers small portions of their owed amounts for the 2014 plan year, meaning that QHP issuers received no risk corridor compensation for the 2015 or 2016 plan years. Today, the collective shortfall for the 2014, 2015, and 2016 plan years stands at over \$12 billion.

In June 2017, Plaintiff Common Ground Healthcare Cooperative filed a class action lawsuit in the United States Court of Federal Claims alleging that, through this “budget neutral” approach to the risk corridors program, the Government violated Section 1342 of the Affordable Care Act and its implementing regulations. Common Ground claims that the Class is entitled to relief under the Tucker Act, a federal statute that provides the United States Court of Federal Claims with jurisdiction to award money judgments against the federal government where a statute is money-mandating and requires payment. The case was assigned to Judge Margaret M. Sweeney. On January 8, 2018, the Court entered an order granting class certification and appointing Quinn Emanuel Urquhart & Sullivan, LLP as lead counsel for the Class.

More detailed information about this lawsuit is contained in the Class Action Complaint filed in this lawsuit. The Class Action Complaint and the Court’s decision on the Government’s motion to dismiss are available at the following website: [www.riskcorridorsclassaction.com](http://www.riskcorridorsclassaction.com).

### **3. What is requested in this lawsuit?**

Common Ground Healthcare Cooperative, the Plaintiff who filed this class action, seeks the following on behalf of itself and the Class:

- Payment from the United States of the full amount of risk corridors payments for the 2016 plan year pursuant to section 1342 of the Affordable Care Act and its implementing regulations;
- Payment to the lawyers who represent Common Ground Healthcare Cooperative who filed this lawsuit, as well as their expenses and fees associated with bringing and prosecuting this lawsuit—such payment would be drawn from any judgment, settlement, or other recovery obtained by Health Republic Insurance Company and the class; and
- The award of any other relief that the Court deems just and proper.

### **4. What is a class action and who is involved?**

In a class action lawsuit, one or more people or entities called “Class Representatives” (in this case Common Ground Healthcare Cooperative) sue on behalf of other people or entities who have similar claims. These people or entities together are a “Class” or “Class members.” The people or entities who sued—and all the Class Members who join the lawsuit—are called “Plaintiffs.” The party or entity against whom the lawsuit is brought is called a “Defendant.” Here, the United States is the Defendant,

because it is the party ultimately responsible for paying amounts owed under the Affordable Care Act. The Court of Federal Claims will resolve all legal and factual issues for every eligible Class Member who timely submits a Class Action Opt-In Notice Form. Those individuals who do not timely submit a Class Action Opt-In Notice Form will be excluded from the Class in this case.

More information about why the Court has allowed this lawsuit to be a class action is located in the Court's Order certifying the Class, available at the following website: [www.riskcorridorsclassaction.com](http://www.riskcorridorsclassaction.com).

## II. Who May Participate In The Class Action

### 5. Am I part of this lawsuit?

You will need to decide whether you wish to join this lawsuit as a Class member. You are not part of the Class unless and until you fill out the Class Action Opt-In Notice Form located at the end of this Notice or at the following website: [www.riskcorridorsclassaction.com](http://www.riskcorridorsclassaction.com). Rule 23 of the Rules of the United States Court of Federal Claims requires that Class Members wishing to participate in this class action must join or "opt-in" to this class action lawsuit. If you fit the description in the next question, you may opt-in and join this lawsuit.

**Please Note that this "opt-in" procedure is different than many other class action lawsuits in the United States because, if do you do nothing, you will not be able to participate in the lawsuit as a Class member.**

### 6. Who is included in the Class?

Under the Rules of the United States Court of Federal Claims, the Court has allowed the lawsuit to be a class action on behalf of the following:

All persons or entities offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2016 benefit year, and whose allowable costs in the 2016 benefit year, as calculated by the Centers for Medicare and Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act). Excluded from the Class are the Defendant and its members, agencies, divisions, departments, and employees.

## III. Your Options

### 7. How can I join the Class?

Enclosed you will find a document titled "Class Action Opt-In Notice Form." If you choose to participate in this lawsuit, and potentially participate in any recovery that may result from this lawsuit, **it is extremely important** that you read, sign, and return the Class Action Opt-In Notice Form electronically via the website Class Counsel has established for this litigation, or by mail, courier or facsimile to Class Counsel. The various locations and methods by which you may submit a Class Action Opt-In Notice Form are listed below:

**By Internet:**

<http://www.riskcorridorsclassaction.com/optin>

- A copy of the Class Action Opt-In Notice Form may also be downloaded at this URL.

**By Courier:**

Risk Corridors Class Action  
c/o JND Class Action Administration  
6521 West 91st Ave.  
Westminster, CO 80031

**By Mail:**

Risk Corridors Class Action  
c/o JND Class Action Administration  
PO Box 6878  
Broomfield, CO 80021

**By Facsimile:** 1-866-214-0156

The Class Action Opt-In Notice Form **must be** submitted, faxed, postmarked, or delivered on or before 60 days after the date of this Notice, that is, **on or before DATE**.

If you do not wish to participate in the lawsuit, you need not take any action.

**8. What happens once I join the Class?**

If you are eligible to be a Class member and choose to join the Class, you will receive any monetary or other benefits obtained from the lawsuit. A judgment in this case will be binding on you, meaning you could not pursue your own separate lawsuit using your own attorney. Similarly, you may be bound by, and can share in, any settlement reached on behalf of the class. In the event Class Counsel and the United States reach a settlement, you will receive notice of the settlement and you may object to the settlement and be heard by the Court on your objection. In the case of any settlement reached before entry of judgment, Class Counsel may seek to decertify the litigation class and recertify a settlement class, which would allow any Class members that previously opted-in to decide whether to join the settlement class at that time.

Any person or entity who submits a Class Action Opt-In Notice Form to join the Class need not appear in Court in order to participate. If you become a Class Member, your interests will be represented by the Class Representative and Class Counsel. Ultimately, the Court will rule on whether you are entitled to compensation and, if so, the amount of compensation owed to you.

In order to join the Class, **you must** submit a Class Action Opt-In Notice Form by **DATE**. This means your Class Action Opt-In Notice Form must either be submitted electronically at

<http://www.riskcorridorsclassaction.com/optin>, received by facsimile, postmarked, or hand delivered by **DATE**.

**9. Will joining the Class cost me any money?**

You will not have to pay any money out of pocket to participate in the Class Action. If the Class is successful in this litigation, however, Class Counsel will ask the Court's permission to be compensated for litigating this case and representing the successful Class. Any sums received by Class Counsel in compensation will be deducted from any recovery, which will proportionately reduce the amount of any award each Class Member receives. If the case is unsuccessful, you will have no obligation for attorneys' fees or costs.

Class Counsel represents that it will request no more than **5%** of any judgment or settlement obtained for the Class. The fee may be substantially less than 5% depending upon the level of class participation represented by the final membership of the Class. In any event, the exact percentage of Class Counsel's fees will be determined by the Court subject to, among other things, the amount at issue in the case and what is called a "lodestar cross-check" (*i.e.*, a limitation on class counsel fees based on the number of hours actually worked on the case). *See, e.g., Geneva Rock Products, Inc. v. United States*, 119 Fed. Cl. 581, 595-96 (2015); *Loving v. Sec'y of Health and Human Servs.*, 2016 WL 4098722, at \*4 (Fed. Cl. Spec. Mstr. July 7, 2016).

**10. What happens if I do not join the Class?**

If you do not submit a Class Action Opt-In Notice Form electronically, postmarked, faxed, or hand delivered **on or before Friday, May 12, 2017**, you **cannot participate as a Class Member** in this case. As a result, you will not receive any money or benefits from the Court as a result of this lawsuit. However, you keep the right to hire your own lawyer or proceed without counsel to sue the United States separately about the same legal claims in this lawsuit and you will not be legally bound by any decision of the Court in this class action.

## IV. The Lawyers Representing You

**11. Do I have a lawyer in this case to represent me?**

The Court has decided that attorneys at the law firm of Quinn Emanuel Urquhart & Sullivan, LLP, led by partners Stephen Swedlow, J.D. Horton, and Adam Wolfson, are qualified to represent you and all Class Members. Quinn Emanuel Urquhart & Sullivan, LLP is called "Class Counsel." Class Counsel has experience handling this type of lawsuit. More information about Class Counsel is available at: [www.quinnemanuel.com](http://www.quinnemanuel.com).

**12. Should I get my own lawyer?**

You do not need to hire your own lawyer because Class Counsel will work on your behalf and represent your interests if you join the Class. You have the right to have your own lawyer. Your own lawyer can appear in court for you if you want someone other than Class Counsel to speak on your behalf. If you choose to hire your own lawyer, you will have to pay that lawyer.

**V. Litigation Information**

**13. How and when will the Court decide this case?**

If the case is not resolved by a settlement, summary judgment, or otherwise, the Class Counsel will have to prove the claims of Plaintiff and the Class at trial. The parties are currently in the pre-trial discovery phase, during which they are exchanging information about the facts of the case. At a trial, the judge would hear all of the evidence to reach a decision about whether the Plaintiff or Defendant is right about the claims in this case.

**14. Do I need to go to the trial?**

You do not need to attend the trial. The Class Counsel will present the case on behalf of all Class members. You and/or your own lawyer are welcome, and entitled, to attend the trial at your own expense.

**15. Will I get any money after the trial?**

If the Class is successful and obtains money as a result of the trial or a settlement, you will be notified about how to participate and receive your share. The parties at this time do not know how long this will take.

**VI. Getting More Information**

**16. What if I need more information or have additional questions?**

If you have additional questions about this Notice, you may visit the website set up by Class Counsel: [www.riskcorridorsclassaction.com](http://www.riskcorridorsclassaction.com), or you may contact Class Counsel:

Stephen A. Swedlow, Esq.  
Quinn Emanuel Urquhart & Sullivan, LLP  
500 West Madison St., Suite 2450  
Chicago, IL 60661  
(312) 705-7400  
[stephenswedlow@quinnemanuel.com](mailto:stephenswedlow@quinnemanuel.com)

Please do **not** contact the United States Court of Federal Claims with questions or requests for information.

## **Class Action Opt-In Notice Form**

UNITED STATES COURT OF FEDERAL CLAIMS  
*Common Ground Healthcare Cooperative v. United States*  
Case No. 17-877 C

1. Fill out this form completely and legibly. **It must be submitted, postmarked, faxed or delivered to the claims administrator (who has been retained by Class Counsel for this case and whose address is at Paragraph 5 below) DATE.**

PLEASE NOTE: A notice has been sent to your address based on information in the Government's records. It is your responsibility to ensure that the information you provide on this form is complete and accurate, and that you are entitled to a distribution of money arising out of the above lawsuit.

2. Please write the full name of the person or entity that offered a Qualified Health Plan(s) under the Patient Protection and Affordable Care Act in the 2016 benefit year, and whose allowable costs in the 2016 benefit year, as calculated by the Centers for Medicare and Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act).

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3. Please fill in the following information.

Address: \_\_\_\_\_

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Telephone number: \_\_\_\_\_

Name, telephone number, and email address for person at QHP issuer that will act as contact for information regarding the Class Action: \_\_\_\_\_

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4. By signing your name in the space below, you are declaring under penalty of perjury under the laws of the United States and applicable state laws:

(a) That the above-listed QHP issuer wishes to opt into the Class Action lawsuit against the United States described in the accompanying Notice (*Common Ground Healthcare Cooperative v. United States*);

(b) That you are authorized by the above-listed QHP issuer to sign this document on behalf of the QHP issuer and thereby bind the above-listed QHP issuer;

(c) That the above-listed QHP issuer offered Qualified Health Plan(s) under the Patient Protection and Affordable Care Act in the 2016 benefit year, and its allowable costs in the 2016 benefit year, as calculated by the Centers for Medicare and Medicaid Services, were more than 103 percent of its target amounts (as those terms are defined in the Patient Protection and Affordable Care Act); and

(d) That to the best of your knowledge, the above-listed QHP issuer is entitled to a distribution out of this lawsuit according to the description of the United States' alleged failure to make full risk corridors payments on an annual basis as printed in the accompanying Notice.

Sign Your Name: \_\_\_\_\_ Date: \_\_\_\_\_

Print Your Name: \_\_\_\_\_

Position at QHP issuer: \_\_\_\_\_

Note: If you represent an entity making a claim, such as a corporation, partnership, or trust, please identify the name of that entity in response to Question 2, but sign in your own name as a representative of that entity.

5. Submit this completed form to:

**By Internet:**

<http://www.riskcorridorsclassaction.com/optin>

- A copy of the Class Action Opt-In Notice Form may also be downloaded at this URL.

**By Courier:**

Risk Corridors Class Action  
c/o JND Class Action Administration  
6521 West 91st Ave.  
Westminster, CO 80031



**By Mail:**

Risk Corridors Class Action  
c/o JND Class Action Administration  
PO Box 6878  
Broomfield, CO 80021

**By Facsimile:** 1-866-214-0156

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

COMMON GROUND HEALTHCARE  
COOPERATIVE,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

No. 1:17-cv-00877-MMS  
(Judge Sweeney)

**DECLARATION OF JENNIFER M. KEOUGH  
CONCERNING PROPOSED NOTICE PROGRAM**

I, JENNIFER M. KEOUGH, declare and state as follows:

**INTRODUCTION**

1. I am the Chief Executive Officer of JND Legal Administration LLC (“JND”). This Declaration is based on my personal knowledge, as well as upon information provided to me by Counsel and experienced JND employees, and if called on to do so, I could and would testify competently thereto.

2. JND is a legal administration services provider with operations centers in Denver, Minneapolis and Seattle. JND has extensive experience with all aspects of legal administration, and our team has designed and implemented notice programs in hundreds of cases.

3. JND was retained to develop and implement the proposed legal notice program (the “Notice Program”) in the above-captioned litigation (“Action”). This Declaration describes the specialized Notice Program and addresses why it is consistent with, and indeed exceeds, other similar court-approved best notice practicable notice programs.

**NOTICE PROGRAM SUMMARY**

4. The objective of this Notice Program is to reach as many potential class members as possible and provide them with the opportunity to review a plain language notice with the ability to easily take the next step and learn more about this Action. The Court certified the following Risk Corridors Class:

All persons or entities offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2016 benefit year, and whose allowable costs in the 2016 benefit year, as calculated by the Centers for Medicare and Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act). Excluded from the Class are the Defendant and its members, agencies, divisions, departments, and employees.

5. The Notice Program described and detailed below has been specifically designed to reach potential class members and attract their attention in order to educate them about the case and the opportunity for them to opt-in as class members. As such, the proposed Notice Program includes the following components: 1) Cover letter, notice and opt-in form (“Notice Packet”) via Federal Express to each potential class member and the respective, Chief Executive Officer (“CEO”), Chief Financial Officer (“CFO”), General Counsel, and person responsible for risk corridors receivables, if known; 2) a Federal Express return envelope; 3) Notice Packet via electronic-mail; 4) an informational and interactive case-specific website on which the notices and other important Court documents are posted and where potential class members may opt-in to the class action on-line; and 5) a dedicated team to provide information and service to the class members of this Action.

6. JND used this same approach for the class action notice plan in the *Health Republic Insurance Company v. United States* (Case No. 1:16-cv-00259) risk corridors litigation, which was approved by this Court in its February 24, 2017 Order.

**NOTICE VIA FEDERAL EXPRESS AND ELECTRONIC-MAIL**

7. Based on the class definition and the information provided by the parties to date, JND will use Federal Express as the means to most effectively reach the potential class members.

8. JND understands there are approximately 200 potential class members. In order to maximize the probability of the Notice Packet reaching those potential class members, JND will send it via Federal Express to each individual or entity as provided by the Defendant, the respective CEO, CFO, General Counsel, and the person responsible for risk corridors receivables, if known. JND will gather the necessary contact information from publicly available material as well as from data provided by the parties, including the list of potential class members the Government will provide to plaintiff no later than February 2, 2018.

9. Sending the Notice Packet via Federal Express and directed to potential class member executives is important so that the companies recognize the Notice Packet is a key communication that requires their attention.

10. Using this approach and based on the information received to date, JND projects an initial notice campaign comprised of approximately 600 - 800 Notice Packets.

11. Once received, JND will load the class data into a dedicated database that it will establish for this Notice Program. Prior to using Federal Express, to increase Notice Packet deliverability to the class members, JND will update address information through the National Change of Address (“NCOA”) database. In addition, JND will employ sophisticated advanced address search methods in attempt to update and complete the mailing list where addresses are not currently

available. JND will also conduct additional research on any Notice Packets that are returned as undeliverable at the address used for the initial delivery and re-deliver any Notice Packets for which an alternative address is located, as needed.

12. Additionally, JND will disseminate a Notice Packet one-time via electronic-mail to the current or last known email of the potential class members as provided by the Defendant.

#### **NOTICE PACKET DESIGN AND CONTENT**

13. The Notice Packet will include a cover letter addressed to the respective CEO, CFO, General Counsel, or person responsible for risk corridors receivables, if known, long-form notice and opt-in form.

14. To encourage potential class members to act, JND proposes including a Federal Express return label with the Notice Packet.

#### **DEDICATED CASE WEBSITE AND CONTACT SERVICE**

15. An informational, interactive website dedicated to the case will be developed to enable potential class members to get information about the litigation. The website will have an easy-to-navigate design and will be formatted to emphasize important information and deadlines.

16. Other available features will include an email contact form, frequently asked questions page, and links to downloadable copies of the long-form notice, Court documents and other important documents.

17. Additionally, JND proposes an online filing system that would allow opt-ins to be processed electronically. In order to accomplish this, JND would assign each entity unique identifiers which would be included as part of the Notice Packet.

18. The site will be optimized for mobile visitors so that information loads quickly on mobile devices and will also be designed to maximize search engine optimization through Google and

other search engines. Key words and natural language search terms will be included in the site's metadata in order to maximize search engine rankings.

19. Once established, the dedicated website will be maintained and will serve as an important resource to provide important updates to potential class members over the lifetime of the litigation.

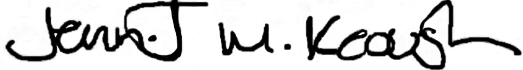
20. In addition, JND will make available a dedicated team to manage the incoming telephone calls received in response to the Notice Program.

### CONCLUSION

21. This tailored and extensive notice campaign reflects a best-practices approach to give effective notice to this certified class.

I declare under the penalty of perjury pursuant to the laws of the United States of America that the foregoing is true and correct.

Executed on January 26, 2018, at Seattle, Washington.



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JENNIFER M. KEOUGH