

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

LOCAL INITIATIVE HEALTH AUTHORITY)	
FOR LOS ANGELES COUNTY, d/b/a L.A.)	
CARE HEALTH PLAN,)	
)	
Plaintiff,)	
)	
v.)	No. 17-1542C
)	Judge Wheeler
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	
_____)	

PLAINTIFF’S RESPONSE TO DEFENDANT’S MOTION FOR ENLARGEMENT

Plaintiff Local Initiative Health Authority for Los Angeles County, operating and doing business as L.A. Care Health Plan (“L.A. Care”), respectfully submits this response and opposition to Defendant’s Motion for Enlargement (ECF No. 41). In addition to the 14 days Defendant already has had to respond to Plaintiff’s Motion for Entry of Rule 54(b) Judgment (ECF No. 40), Defendant now asks the Court for an additional 21 days to file its response. The Court should deny Defendant’s motion because Defendant has not shown good cause and because further delay in any entry of judgment prejudices Plaintiff.

Plaintiff advised Defendant, before Defendant filed its Motion for Enlargement, that L.A. Care would consent to a seven-day extension of time to file its response, but Defendant insisted on filing its motion for enlargement seeking an additional 21 days instead.

Nearly eight months have passed since this Court’s February 14, 2019 Order, in which the Court found the Defendant liable for violating the express terms of the ACA, implementing regulations, and its implied-in-fact contract, holding the Defendant was obligated to make mandatory Cost Sharing Reduction (CSR) payments to L.A. Care in advance each month. ECF No. 32. The parties filed a Joint Status Report on March 14, 2019 (ECF No. 33), and an Updated Joint Status Report on August 2, 2019 (ECF No. 36), setting forth their respective positions on

resolution of the CSR claims, and the Court heard oral argument on September 6, 2019.

Although Defendant's counsel asserts that he has "commitments in numerous other matters" (ECF No. 41 at 1), the Department of Justice has many attorneys and none of those other matters explain Defendant's failure to file its response to Plaintiff's motion within the 14-day period afforded by the Court's rules. Nor has Defendant demonstrated why it needs a total of 35 days to respond to Plaintiff's pending motion for entry of judgment, which was filed on September 24.

Defendant has been aware of Plaintiff's position on entry of judgment for several months. Defendant set forth its own position in the Updated JSR two months ago, and the parties argued their respective positions to the Court on September 6, at which time Defendant understood that Plaintiff would be filing its Motion for Entry of Rule 54(b) Judgment. Indeed, at the end of the September 6th Hearing, the Court requested that L.A. Care file its Rule 54(b) Motion "as soon as you can," and then specifically instructed the parties that once the motion was filed, "then the typical time periods under the Court's rules would apply, in which the Government would respond within 14 days and the Plaintiff can reply within 7 days." September 6, 2019 Hearing Transcript at 39-40. Defendant posed no objection. Under the Court's rules and its instructions, Defendant's response to Plaintiff's motion is therefore due within 14 days, by October 8, 2019.

As the Court is aware, the key factor compelling entry of judgment on Plaintiff's CSR claims is the fact that Plaintiff cannot earn pre-judgment interest at all, and can only earn post-judgment interest after judgment has been entered. *See* Plaintiff's Motion (ECF No. 40) at 15-16; *Connecticut Yankee Atomic Power Co. v. United States*, 142 Fed. Cl. 87, 91 (2019) (entering Rule 54(b) judgment and emphasizing that "the lack of prejudgment interest cannot be ignored"). The 21-day delay Defendant now seeks will further prejudice L.A. Care by unnecessarily prolonging the Court's ruling on Plaintiff's pending motion.

For the foregoing reasons, Plaintiff respectfully requests that the Court deny Defendant's motion for a 21-day enlargement of time.

Dated: October 3, 2019

Respectfully Submitted,

s/ Lawrence S. Sher
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CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2019, a copy of the foregoing Plaintiff's Response to Defendant's Motion for Enlargement was filed electronically with the Court's Electronic Case Filing (ECF) system. I understand that notice of this filing will be sent to all parties by operation of the Court's ECF system.

s/ Lawrence S. Sher
Lawrence S. Sher
Counsel for Plaintiff