

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
FOR THE 2019 COST-SHARING REDUCTION CLASS**

PRELIMINARY STATEMENT

Pursuant to the Court’s order (Dkt. No. 90) granting class certification as to the 2019 Cost-Sharing Reduction 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. Defendant the United States of America (“Defendant”) has already provided potential Class members’ contact information to Class Counsel and Plaintiff has conferred with Defendant regarding this motion and the proposed notice. Defendant has not taken a position on this motion.

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, Defendant has provided 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 2019 benefit year, and who made cost-sharing reductions for eligible insureds pursuant to Section 1402 of the Patient Protection and Affordable Care Act, but did not receive a “timely and periodic” payment from the Government of an amount “equal to the value of the reductions” provided to its insureds. Excluded from the Class is 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 cost-sharing reduction 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 and any other information Plaintiff has learned via the Risk Corridors Class notice and opt-in process;
- 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 is based in 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 for the previously-certified risk corridors and 2017/2018 cost-sharing reduction classes in this case and the parallel risk corridors class in the *Health Republic* case, 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.* ¶¶ 2-6.

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: July 8, 2020

Respectfully submitted,

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

s/ Stephen Swedlow

Stephen Swedlow
stephenswedlow@quinnemanuel.com
191 N. Wacker Drive
Suite 2700
Chicago, Illinois 60606
Telephone: (312) 705-7400
Facsimile: (312) 705-7401

J.D. Horton
jdhorton@quinnemanuel.com
Adam B. Wolfson
adamwolfson@quinnemanuel.com
865 S. Figueroa Street
Los Angeles, California 90017
Telephone: (213) 443-3000
Facsimile: (213) 443-3100

Attorneys for Plaintiff Common Ground
Healthcare Cooperative and the Class

CERTIFICATE OF SERVICE

I certify that on July 8, 2020, a copy of the attached **PLAINTIFF COMMON GROUND HEALTHCARE COOPERATIVE'S MOTION FOR APPROVAL OF CLASS NOTICE PLAN FOR THE 2019 COST-SHARING REDUCTION CLASS** was served via the Court's CM/ECF system on all counsel of record.

s/Stephen Swedlow

Stephen Swedlow

Exhibit 1

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

If you offered Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2019 benefit year, made cost-sharing reductions for eligible insureds pursuant to Section 1402 of the Patient Protection and Affordable Care Act, and you did not receive a “timely and periodic” payment from the Government of an amount “equal to the value of the reductions” provided to your insureds, 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 2019 benefit year, and who made cost-sharing reductions for eligible insureds pursuant to Section 1402 of the Patient Protection and Affordable Care Act, but did not receive a “timely and periodic” payment from the Government of an amount “equal to the value of reductions” provided to its insureds, 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* cost-sharing reduction 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: 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:	
ASK TO BE INCLUDED (OPT IN TO THE CLASS)	<p>Receive any cost-sharing reduction payments generated from this lawsuit, and be bound by its results.</p> <p>In order to join the Class, <i>you must</i> 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 [DATE].</p>
DO NOTHING	<p>Get no benefits from the lawsuit. Keep rights to sue the United States separately.</p>

- Your rights and options, and the deadlines to exercise them, are explained in this notice.
- **Any questions? Read on and visit www.CSRClassAction2019.com.**

What This Notice Contains

Basic Information.....	2	The Lawyers Representing You.....	5
Who May Participate in the Class Action.....	3	Litigation Information.....	6
Your Options	4	Getting More Information	6

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 2019 benefit year, and that you made cost-sharing reductions to eligible insureds for which you have not received reimbursement from the federal government.

The purpose of this notice is to inform you of a class action lawsuit regarding unpaid cost-sharing reduction 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 made cost-sharing reduction payments on a timely and periodic basis for the 2019 benefit year to which it and other QHP issuers such as your organization are entitled under the Affordable Care Act. Section 1402 of the Affordable Care Act established a cost-sharing reduction program that applied to insurers who offered QHPs on the Affordable Care Act’s insurance exchanges. The cost-sharing reduction program provides that QHP issuers must pay a portion of eligible insureds’ out-of-pocket costs, such as deductibles, co-pays, and similar expenses, thereby reducing the amount eligible insureds must pay. Section 1402 further states that the Secretaries of the Department of Health and Human Services (“HHS”) and the Treasury “shall make periodic and timely payments to the [QHP] issuer equal to the value of the reductions.” Beginning in 2014, the United States began making these cost-sharing reduction payments, but then ceased paying them in 2017 and continues to not pay them.

In March 2019, Plaintiff Common Ground Healthcare Cooperative amended a previously filed class action lawsuit in the United States Court of Federal Claims to add a claim alleging that the Government violated Section 1402 of the Affordable Care Act and its implementing regulations by failing to make “periodic and timely” cost-sharing reduction payments for the 2019 benefit year. Plaintiff 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 May 29, 2020, 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 Second Amended Class Action Complaint filed in this lawsuit. The Second Amended Class Action Complaint is available at the following website: www.CSRClassAction2019.com.

3. What is required in this lawsuit?

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

- Payment from the United States of the full amount of unpaid cost-sharing reduction payments for the 2019 plan year pursuant to section 1402 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 Common Ground Healthcare Cooperative 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 cost-sharing reduction 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.CSRClassAction2019.com.

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.CSRClassAction2019.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: 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 class of people or entities:

All persons or entities offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2019 benefit year, and who made cost-sharing reductions for eligible insureds pursuant

to Section 1402 of the Patient Protection and Affordable Care Act, but did not receive a “timely and periodic” payment from the Government of an amount “equal to the value of the reductions” provided to its insureds. Excluded from the Class is the Defendant and its members, agencies, divisions, departments, and employees.

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 JND Class Action Administration (via the below addresses or facsimile number). The various locations and methods by which you may submit a Class Action Opt-In Notice Form are listed below:

By Internet:

<http://www.CSRClassAction2019.com/optin>

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

By Courier:

CSR Class Action 2019
c/o JND Class Action Administration
1100 2nd Ave, Suite 300
Seattle, WA 98101

By Mail:

CSR Class Action 2019
c/o JND Class Action Administration
PO Box 91350
Seattle, WA 98111

By Facsimile: 1-866-215-4469

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 www.CSRClassAction2019.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 [DATE]**, you **cannot participate as a Class Member** in this case. As a result, you will not receive any money or benefits from the Court for this lawsuit. However, you keep the right to hire your own lawyer 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.

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.

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.

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, Class Counsel will have to prove the claims of Plaintiff and the Class at trial. The parties are currently in the pleadings phase. At this juncture, Plaintiff has filed a complaint detailing the Class's claims and the Government will be given an opportunity to either respond or move to dismiss those claims. At a trial, the judge would hear all of the evidence to reach a decision about whether 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. 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.

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 at www.CSRClassAction2019.com, or you may contact Class Counsel directly:

Stephen A. Swedlow, Esq.
Quinn Emanuel Urquhart & Sullivan, LLP
191 N. Wacker Drive, Suite 2700
Chicago, IL 60606
(312) 705-7400
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) on or before [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 2019 benefit year, and who made cost-sharing reductions for eligible insureds pursuant to Section 1402 of the Patient Protection and Affordable Care Act, but did not receive a "timely and periodic" payment from the Government of an amount "equal to the value of the reductions" provided to its insureds.

3. Please fill in the following information for the QHP issuer named above.

Address: _____

Telephone number: _____

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

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 in to 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 2019 benefit year, and made cost-sharing reductions for eligible insureds

pursuant to Section 1402 of the Patient Protection and Affordable Care Act, but did not receive a “timely and periodic” payment from the Government of an amount “equal to the value of the reductions” provided to its insureds; 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 “timely and periodic” cost-sharing reduction reimbursements 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.CSRClassAction2019.com/optin>

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

By Courier:

CSR Class Action 2019
c/o JND Class Action Administration
1100 2nd Ave, Suite 300
Seattle, WA 98101

By Mail:

CSR Class Action 2019
c/o JND Class Action Administration
PO Box 91350
Seattle, WA 98111

By Facsimile:

1-866-215-4469

Exhibit 2

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 FOR 2019 COST-SHARING REDUCTION CLASS**

I, JENNIFER M. KEOUGH, declare as follows:

INTRODUCTION

1. I am the Chief Executive Officer (“CEO”) 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 upon to do so, I could and would testify competently thereto.

2. JND is a legal administration services provider with headquarters located in Seattle, Washington. 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 Class:

All persons or entities offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2019 benefit year, and who made cost-sharing reductions for eligible insureds pursuant to Section 1402 of the Patient Protection and Affordable Care Act, but did not receive a “timely and periodic” payment from the Government of an amount “equal to the value of the reductions” provided to its insureds. Excluded from the Class is 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 cost-sharing reduction receivables, if known; 2) a Federal Express return envelope; 3) Notice Packet via email; 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, and for the class action notice plans in this case with respect to the 2016 risk corridors and 2017-2018 cost-sharing reduction classes, which were approved by this Court in its respective February 1, 2018 and May 24, 2018 Orders.

NOTICE VIA FEDERAL EXPRESS AND EMAIL

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

8. In order to maximize the probability of the Notice Packet reaching 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 provided to Class Counsel on June 25, 2020.

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. Upon receipt of the data on June 29, 2020, JND proceeded to load the class data into a dedicated database established 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. As necessary, JND will also employ sophisticated advanced address search methods to update the mailing list. JND will 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.

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

NOTICE PACKET DESIGN AND CONTENT

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

13. 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

14. 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.

15. 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.

16. JND will also implement an online filing system that would allow opt-ins to be processed electronically. In order to accomplish this, JND will assign each company a unique identifier which will be included as part of the Notice Packet and then used by the Class Member to login to the Electronic Opt-In Submission page of the website to upload their completed opt-in form.

17. The website 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.

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

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

CONCLUSION

20. 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 July 8, 2020, at Seattle, Washington.



JENNIFER M. KEOUGH