

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

COMMON GROUND HEALTHCARE)	
COOPERATIVE,)	
)	
Plaintiff,)	No. 17-877C
)	
v.)	
)	Chief Judge Sweeney
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	
)	

DEFENDANT’S RESPONSE TO THE COURT’S JULY 9, 2020 ORDER APPROVING PLAINTIFF’S PROPOSED CLASS ACTION NOTICE PLAN, PROPOSED CLASS ACTION NOTICE, AND OPT-IN FORM

Defendant, the United States, respectfully submits this response to the Court’s July 9, 2020 Order approving the plaintiff’s proposed class action notice plan, proposed class action notice, and opt-in form. ECF No. 96. In the Court’s Order, the Court states that “Plaintiff represents that defendant takes no position on the motion or the proposed notice.”¹ In fact, the Government represented to plaintiff that having only received a draft of the proposed notice and opt-in form at 1 p.m. EDT on the day of filing, it would not be able to provide its position that day and therefore intended to file a response to the motion in due course. *See* Addendum (July 8, 2020 e-mail correspondence between counsel). As we explained, though the Department of Justice would make an effort to contact our agency counsel at the Department of Health and Human Services that day, our primary agency contact was on vacation this week.

¹ We believe that the Court’s impression of the Government’s position on the motion arose from the ambiguity of the language in plaintiff’s motion, which stated “Defendant has not taken a position on this motion,” rather than a misrepresentation by plaintiffs. A more precise wording would have been that “Defendant has not taken a position on this motion **as of the time of filing.**”

We confirmed later in the day that we could not provide a response on short notice and would therefore need to file a response to the motion.

Accordingly, the Government respectfully requests that the Court hold in abeyance its order approving the plaintiff's proposed class action notice plan, proposed class action notice, and opt-in form, until the Department of Justice has an opportunity to obtain the views of HHS and file a response with our position.²

Respectfully submitted,

MICHAEL D. GRANSTON
Deputy Assistant Attorney General

ROBERT E. KIRSCHMAN, JR.
Director

/s Claudia Burke
CLAUDIA BURKE
Assistant Director

/s Christopher J. Carney
CHRISTOPHER J. CARNEY
Senior Litigation Counsel

MARC S. SACKS
Assistant Director

² We recognize that plaintiffs have represented that its motion is substantially the same as that previously approved by the Court in this case for the 2017-18 class, nonetheless it is the policy of the Department of Justice to obtain input from our client agencies regarding substantive motions before providing our position.

ERIC E. LAUFGRABEN
Senior Trial Counsel

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July 9, 2020

Attorneys for the United States of America

ADDENDUM

From: [Carney, Chris \(CIV\)](#)
To: [Benjamin Berkman](#); [Burke, Claudia \(CIV\)](#); [Iarossi, Albert S. \(CIV\)](#); [Laufgraben, Eric E. \(CIV\)](#); [Sacks, Marcus S. \(CIV\)](#)
Cc: [Stephen Swedlow](#)
Subject: RE: Common Ground - 2019 CSR Class Notice/Opt-in Form
Date: Wednesday, July 08, 2020 5:03:00 PM

Benjamin,

I'm not able to get you our position on your motion on this short notice. Since your deadline is today, we'll need to file a response to the motion setting forth our position.

Regards,

Chris

From: Benjamin Berkman <benjaminberkman@quinnemanuel.com>
Sent: Wednesday, July 08, 2020 1:13 PM
To: Carney, Chris (CIV) <CCarney@civ.usdoj.gov>; Burke, Claudia (CIV) <CBurke@CIV.USDOJ.GOV>; Iarossi, Albert S. (CIV) <aiarossi@CIV.USDOJ.GOV>; Laufgraben, Eric E. (CIV) <elaufgra@CIV.USDOJ.GOV>; Sacks, Marcus S. (CIV) <msacks@CIV.USDOJ.GOV>
Cc: Stephen Swedlow <stephenswedlow@quinnemanuel.com>
Subject: RE: Common Ground - 2019 CSR Class Notice/Opt-in Form

Thanks, Chris.

From: Carney, Chris (CIV) [<mailto:Chris.Carney@usdoj.gov>]
Sent: Wednesday, July 8, 2020 12:09 PM
To: Benjamin Berkman <benjaminberkman@quinnemanuel.com>; Burke, Claudia (CIV) <Claudia.Burke@usdoj.gov>; Iarossi, Albert S. (CIV) <Albert.S.Iarossi@usdoj.gov>; Laufgraben, Eric E. (CIV) <Eric.E.Laufgraben@usdoj.gov>; Sacks, Marcus S. (CIV) <Marcus.S.Sacks@usdoj.gov>
Cc: Stephen Swedlow <stephenswedlow@quinnemanuel.com>
Subject: RE: Common Ground - 2019 CSR Class Notice/Opt-in Form

[EXTERNAL EMAIL]

Benjamin,

I don't know if I'll be able to get sign-off from the necessary folks at this late juncture. For instance, I know our primary agency counsel is out this week and only checking e-mail on a periodic basis. I'll see what I can do though and will let you know.

Regards,

Chris

From: Benjamin Berkman <benjaminberkman@quinnemanuel.com>
Sent: Wednesday, July 08, 2020 12:59 PM
To: Carney, Chris (CIV) <CCarney@civ.usdoj.gov>; Burke, Claudia (CIV) <CBurke@CIV.USDOJ.GOV>;
Iarossi, Albert S. (CIV) <aiarossi@CIV.USDOJ.GOV>; Laufgraben, Eric E. (CIV)
<elaufgra@CIV.USDOJ.GOV>; Sacks, Marcus S. (CIV) <msacks@CIV.USDOJ.GOV>
Cc: Stephen Swedlow <stephenswedlow@quinnemanuel.com>
Subject: Common Ground - 2019 CSR Class Notice/Opt-in Form

Chris,

Today, in the Common Ground case, we are going to submit our motion for approval of class notice for the 2019 CSR class notice and opt-in form. I have attached our draft motion, as well as the notice/opt-in form and a declaration from the claims administrator, which we will attach to our motion. These are substantially the same as our previous motion to approve the 2017/2018 CSR class notice/opt-in form, which the government did not oppose. Is the government opposed to this motion, or can we file it unopposed? We would appreciate a response by the end of the day; apologies for the short notice.

Best,

Benjamin Berkman
Associate,
Quinn Emanuel Urquhart & Sullivan, LLP

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