

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

_____	)	
<b>OREGON’S HEALTH CO-OP,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>No. 18-94C</b>
<b>v.</b>	)	
	)	<b>Judge Elaine D. Kaplan</b>
<b>THE UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Defendant.</b>	)	
_____	)	

**STIPULATION FOR ENTRY OF JUDGMENT**

To resolve the claims of Plaintiff Oregon’s Health CO-OP (“OHC”), formerly named Community Care of Oregon, Inc., and the defenses and potential counter-claims of the United States, and to permit the entry of final judgment on those claims and defenses, it is stipulated between the Parties:

1. The Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010), 124 Stat. 119, and the Health Care Reconciliation Act of 2010, Pub. L. No. 111-152 (2010), 124 Stat. 1029 (collectively, the “ACA”) created several interrelated programs to expand access to affordable health insurance coverage.

2. The ACA created three interrelated risk mitigation programs. Specifically, section 1341 of the ACA (42 U.S.C. § 18061) created the reinsurance program; section 1342 of the ACA (42 U.S.C. § 18062) created the risk corridors program; and section 1343 of the ACA (42 U.S.C. § 18063) created the risk adjustment program. Sections 1343 (42 U.S.C. § 18063), 1311 (42 U.S.C. § 18031), and 1321 (42 U.S.C. § 18041) of the ACA authorize the United States to collect user fees for its operation of the risk adjustment program. Under these programs, OHC either owes payments to or is owed payments from the United States.

3. Section 1412 of the ACA (42 U.S.C. § 18082) authorized advance payment of premium tax credits (“APTCs”) to insurers. Section 1402 of the ACA (42 U.S.C. § 18071) authorized cost-sharing reductions (“CSRs”). OHC owes the United States for APTCs and CSRs.

### **THE PARTIES’ CLAIMS AND DEFENSES**

4. In the above-captioned case, OHC filed a Complaint in this Court seeking risk corridors damages for benefit years 2014, 2015, and 2016, advancing a claim based on Section 1342 of the ACA (Count I) and a claim of a breach of an implied-in-fact contract (Count II).

5. On April 27, 2020, the United States Supreme Court held that section 1342 of the ACA “created an obligation neither contingent on nor limited by the availability of appropriations or other funds,” that the obligation was not affected by subsequently enacted legislation, and that the “petitioners may seek to collect payment through a damages action in the Court of Federal Claims.” *Maine Community Health Options v. United States*, 140 S. Ct. 1308, 1323, 1331 (2020).

6. The Parties agree that the Supreme Court’s decision in *Maine Community Health Options* entitles OHC to receive payment under section 1342 of the ACA for benefit years 2014, 2015, and 2016.

7. The United States’ position is that it has a right to offset to collect (or net) debts arising under other ACA programs and has counter-claims against OHC relating to those debts owed.

8. OHC disputes the legality of the United States’ use of offset and disputes any counter-claims against OHC. OHC’s position is that, because it is in receivership, it should pay any debts owed to the United States in the order of priority specified in Oregon state insurance law. OHC also disputes the United States’ position that post liquidation interest is owed. However, to resolve this litigation and settle all potential counter-claims of the United States relating to any

of the ACA programs described in paragraphs 2 and 3, OHC agrees to deduct certain amounts from the risk corridors payments the United States owes to OHC.

### **STIPULATIONS AS TO DAMAGES**

9. The Parties stipulate that OHC is entitled to payment from the United States under the risk corridors program (section 1342 of the ACA) for the 2014, 2015, and 2016 benefit years in the amount of \$24,994,828.27.

10. OHC agrees to pay the United States the following amounts: \$4,300,080.31 for the risk adjustment program; \$21,855.55 for risk adjustment user fees; \$1,608,118.29 for APTCs; and \$419,971.18 for CSR reconciliations.

11. The United States stipulates and agrees that the payments described in paragraph 10 will be payment in full for any outstanding debts that OHC owes to the United States under the ACA programs described in paragraphs 2 and 3.

12. Accordingly, the Parties jointly request that the Court enter judgment in favor of OHC in the amount of \$24,994,828.27 on Count I of the Complaint, and judgment in favor of the United States in the amount of \$6,350,025.33. The judgment in favor of the United States shall be paid through deduction from the amount owed under this judgment to OHC upon submission of the judgments to the Judgment Fund. The net amount payable by the United States to OHC is **\$18,644,802.94**.

13. Upon entry of judgment, the Parties further jointly request that that Court dismiss Count II of the Complaint with prejudice.

14. Upon entry of judgment, OHC (HIOS ID 99389), formerly named Community Care of Oregon, Inc., and any and all of OHC's affiliated entities release the United States, its agencies, instrumentalities, officers, agents, employees, and servants, from all claims (including attorney

fees, costs, and expenses of every kind and however denominated) that OHC (HIOS ID 99389) and any and all of OHC's affiliated entities has asserted, could have asserted, or may assert in the future against the United States its agencies, instrumentalities, officers, agents, employees, and servants, arising under or related to the ACA.

15. Upon entry of judgment, the United States releases OHC, its Receiver, and its Special Deputy Receiver, as well as their officers, agents, employees, and servants, from all claims (including attorney fees, costs, and expenses of every kind and however denominated) that the United States could have asserted against OHC, its Receiver, and/or its Special Deputy Receiver, their officers, agents, employees, or servants arising out of or related to the ACA programs in paragraphs 2 and 3.

Dated: July 13, 2020

Respectfully Submitted:

/s/ Caroline M. Brown

Caroline M. Brown

Philip J. Peisch

Brown & Peisch PLLC

1233 20th St. NW, Suite 505

Washington, DC 20036

(202) 499-4258

cbrown@brownandpeisch.com

ppeisch@brownandpeisch.com

*Attorneys for Oregon's Health Co-op*

MICHAEL D. GRANSTON  
Deputy Assistant Attorney General<sup>1</sup>

RUTH A. HARVEY  
Director  
Commercial Litigation Branch

KIRK T. MANHARDT

/s/Shane Huang  
SHANE HUANG  
MARC S. SACKS  
FRANCES M. MCLAUGHLIN  
PHILLIP M. SELIGMAN  
TERRANCE A. MEBANE  
CHRISTOPHER VANDEUSEN  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice  
P.O. Box 875  
Ben Franklin Station  
Washington, D.C. 20044  
Tel. (202) 616-0341  
Fax: (202) 514-9163  
shane.huang@usdoj.gov

Attorneys for the United States

---

<sup>1</sup> Acting Assistant Attorney General Ethan P. Davis is recused from this matter.