



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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DIVISION OF SOCIAL JUSTICE
HEALTH CARE BUREAU

September 17, 2018

VIA ECF and Email

Judge Richard J. Sullivan
United States District Court
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square, Room 2104
New York, New York 10007
SullivanNYSDCChambers@nysd.uscourts.gov

**Re: State of New York, et al. v. U.S. Department of
Health and Human Services, et al., 18-cv-00683**

Dear Judge Sullivan:

The Plaintiffs in the above-referenced action respectfully request that the Court either: (a) restore this action to the docket so Plaintiffs may file a Notice of Voluntary Dismissal pursuant to Fed. R. Civ. P. 41(a)(1)(A), causing this action to be dismissed without prejudice, or (b) enter a court order dismissing the action without prejudice pursuant to Fed. R. Civ. P. 41(a)(2).

On January 26, 2018, New York and Minnesota (the “States”) filed a Complaint against the U.S. Department of Health and Human Services and its Secretary (together, “HHS”) alleging violations of the Administrative Procedure Act resulting from HHS’s abrupt refusal to pay a portion of funds owed to the States under the Affordable Care Act. On May 2, 2018, the parties submitted a Stipulation and Proposed Order seeking a stay of the litigation while HHS engaged in additional agency action that the parties anticipated could address certain of the States’ concerns raised in the Complaint. *See* Dkt. No. 22. In response, on May 3, 2018, the Court dismissed the case with prejudice and further ordered that the parties may, by August 1, 2018, “send a letter requesting to restore this action to the docket with an explanation for the request.” *Id.* The court later extended this deadline, at the parties’ request, to September 21, 2018. *See* Dkt. Nos. 23, 23-1, 24.

On August 24, 2018, consistent with the parties’ June 8 Amended Stipulation, HHS provided the States with its final administrative order. *See* Dkt. Nos. 23, 23-1. The final administrative order resolves some of the States’ concerns and results in a significant restoration

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of funds owed to the States for 2018. The final administrative order does not address funding for future years and does not resolve all of the legal claims asserted in the Complaint.

After consideration of HHS's final administrative order, the States have determined that the best course of action is have the case voluntarily dismissed without prejudice. Fed. R. Civ. P. 41(a)(1)(A)(i) authorizes plaintiffs to file a notice of dismissal without prejudice without a court order if the defendants have not yet served an answer or a motion for summary judgment. Accordingly, as HHS has not yet served an answer or motion for summary judgment, this action may be voluntarily dismissed without prejudice by the States without a court order pursuant to Fed. R. Civ. P. 41(a)(1)(A). This action may also be voluntarily dismissed without prejudice by court order, pursuant to Fed. R. Civ. P. 41(a)(2).

As the Court has already dismissed this action with prejudice in its earlier order, the States respectfully request that either: (a) the Court restore this action to the docket so they may file the Notice of Voluntary Dismissal pursuant to Fed. R. Civ. P. 41(a)(1)(A), or (b) the Court enter an order dismissing this action without prejudice. This request is timely, as it is well before the Court's deadline of September 21, 2018.

HHS does not oppose the States' request to restore this action to the docket, nor do they oppose the States' request to change the dismissal of this action to one without prejudice.

The Notice of Voluntary Dismissal the Plaintiffs intend to file is attached to this letter.

Respectfully Submitted,

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enclosure