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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

THE STATE OF CALIFORNIA; THE STATE OF CONNECTICUT; THE STATE OF DELAWARE; THE DISTRICT OF COLUMBIA; THE STATE OF ILLINOIS; THE STATE OF IOWA; THE COMMONWEALTH OF KENTUCKY; THE STATE OF MARYLAND; THE COMMONWEALTH OF MASSACHUSETTS; THE STATE OF MINNESOTA; THE STATE OF NEW MEXICO; THE STATE OF NEW YORK; THE STATE OF NORTH CAROLINA; THE STATE OF OREGON; THE COMMONWEALTH OF PENNSYLVANIA; THE STATE OF RHODE ISLAND; THE STATE OF VERMONT; THE COMMONWEALTH OF VIRGINIA; and THE STATE OF WASHINGTON,

Plaintiffs,

v.

DONALD J. TRUMP, President of the United States; ERIC D. HARGAN, Acting Secretary of the United States Department of Health and Human Services; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; STEVEN T. MNUCHIN, Secretary of the United States Department of the Treasury; UNITED STATES DEPARTMENT OF THE TREASURY; and DOES 1-20,

Defendants.

Case No. 4:17-cv-05895-KAW

[PROPOSED] TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE

1 TO DEFENDANTS DONALD J. TRUMP, President of the United States; ERIC D.
2 HARGAN, Acting Secretary of the United States Department of Health and Human Services;
3 UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; STEVEN T.
4 MNUCHIN, Secretary of the United States Department of the Treasury; UNITED STATES
5 DEPARTMENT OF THE TREASURY:

6 YOU (AND EACH OF YOU) ARE HEREBY ORDERED TO SHOW CAUSE at
7 _____ (*time*) on _____ (*date*), or as soon thereafter as counsel may
8 be heard in the courtroom of the Honorable _____, located at
9 _____, why you, your officers, agents, servants,
10 employees, and attorneys and those in active concert or participation with you or them, should not
11 be enjoined pending resolution of this action to make timely and complete cost-sharing reduction
12 payments in accordance with the Patient Protection and Affordable Care Act, including but not
13 limited to 31 U.S.C. § 1324, 26 U.S.C. § 36B, and 42 U.S.C. §§ 18071, 18082.

14 PENDING HEARING on the above Order to Show Cause, you, your officers, agents,
15 servants, employees, and attorneys and all those in active concert or participation with you or
16 them ARE HEREBY ENJOINED to continue making timely and complete cost-sharing reduction
17 payments in accordance with the Patient Protection and Affordable Care Act, including but not
18 limited to 31 U.S.C. § 1324, 26 U.S.C. § 36B, and 42 U.S.C. §§ 18071, 18082. This Order
19 specifically requires you and those in active concert or participation with you to timely make the
20 CSR reimbursement payments the were scheduled to be paid to issuers of qualified health plans
21 on October 20, 2017, but is not limited to that payment. In issuing this Temporary Restraining
22 Order, the Court finds and concludes that Plaintiffs have shown that immediate and irreparable
23 injury will result to the Plaintiff States and millions of Americans who have access to affordable
24 health care coverage under the Patient Protection and Affordable Care Act if Defendants stop
25 making timely and complete cost-sharing reduction payments.

26 This Temporary Restraining Order (TRO) is effective immediately. The Court waives the
27 security requirement under Federal Rule of Civil Procedure 65(c) because Plaintiffs have
28

1 demonstrated that Defendants will not incur any costs or damages in complying with the TRO, as
2 the TRO will save the federal government money.

3 This Order to Show Cause and supporting papers must be served on Defendants no later
4 than _____ days before the date set for hearing, and proof of service shall be filed no later
5 than _____ days before the hearing. Any response or opposition to this Order to Show
6 Cause must be filed and served on the Plaintiff States' counsel through ECF no later than
7 _____ court days before the date set for hearing. Any reply shall be filed and served no
8 later than _____ court days before the date set for hearing.

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Dated: _____

Hon.
United States District Judge

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8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 **THE STATE OF CALIFORNIA; THE**
12 **STATE OF CONNECTICUT; THE STATE**
13 **OF DELAWARE; THE DISTRICT OF**
14 **COLUMBIA; THE STATE OF ILLINOIS;**
15 **THE STATE OF IOWA; THE**
16 **COMMONWEALTH OF KENTUCKY; THE**
17 **STATE OF MARYLAND; THE**
18 **COMMONWEALTH OF**
19 **MASSACHUSETTS; THE STATE OF**
20 **MINNESOTA; THE STATE OF NEW**
21 **MEXICO; THE STATE OF NEW YORK;**
22 **THE STATE OF NORTH CAROLINA; THE**
23 **STATE OF OREGON; THE**
24 **COMMONWEALTH OF PENNSYLVANIA;**
25 **THE STATE OF RHODE ISLAND; THE**
26 **STATE OF VERMONT; THE**
27 **COMMONWEALTH OF VIRGINIA; and**
28 **THE STATE OF WASHINGTON,**

Plaintiffs,

v.

23 **DONALD J. TRUMP, President of the United**
24 **States; ERIC D. HARGAN, Acting Secretary**
25 **of the United States Department of Health**
26 **and Human Services; UNITED STATES**
27 **DEPARTMENT OF HEALTH AND**
28 **HUMAN SERVICES; STEVEN T.**
MNUCHIN, Secretary of the United States
Department of the Treasury; UNITED
STATES DEPARTMENT OF THE
TREASURY; and DOES 1-20,

Defendants.

Case No. 4:17-cv-05895-KAW

**PLAINTIFFS' EX PARTE MOTION
FOR A TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT ISSUE**

RELIEF REQUESTED BY 4:00 P.M.
THURSDAY, OCTOBER 19, 2017

1 **EX PARTE MOTION FOR A TEMPORARY RESTRAINING ORDER AND ORDER TO**
2 **SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

3 PLEASE TAKE NOTICE that Plaintiffs the State of California; the State of Connecticut;
4 the State of Delaware; the District of Columbia; the State of Illinois; the State of Iowa; the
5 Commonwealth of Kentucky; the State of Maryland; the Commonwealth of Massachusetts; the
6 State of Minnesota; the State of New Mexico; the State of New York; the State of North Carolina;
7 the State of Oregon; the Commonwealth of Pennsylvania; the State of Rhode Island; the State of
8 Vermont; the Commonwealth of Virginia; and the State of Washington (collectively, the States)
9 hereby move the Court pursuant to Federal Rule of Civil Procedure 65 for a temporary restraining
10 order (TRO) and order to show cause why a preliminary injunction should not issue against
11 Defendants Donald J. Trump, President of the United States; Eric D. Hargan, Acting Secretary of
12 the United States Department of Health and Human Services; the United States Department of
13 Health and Human Services; Steven T. Mnuchin, Secretary of the United States Department of
14 the Treasury; and the United States Department of the Treasury, and their officers, agents,
15 servants, employees, attorneys, and any other persons who are in active concert or participation
16 with them.

17 The Plaintiff States respectfully move the Court to enter a nationwide temporary restraining
18 order and preliminary injunction requiring the Defendants to continue making the cost-sharing
19 reduction payments required by the Patient Protection and Affordable Care Act (ACA) pending
20 judicial resolution of this action. This motion is based on this Ex Parte Motion, the
21 accompanying Complaint for Declaratory and Injunctive Relief, the accompanying Memorandum
22 of Points and Authorities, the accompanying proposed Temporary Restraining Order, the
23 accompanying supporting declarations, as well as the papers, evidence, and records on file in this
24 action, and any other written or oral evidence or argument presented at or before the time this
25 motion is heard by the Court.

26 As set forth in accompanying Memorandum of Points and Authorities, a TRO is necessary
27 by **4:00 p.m. on October 19, 2017** to prevent immediate and irreparable harm to the Plaintiff
28 States and the millions of Americans who benefit from affordable health care coverage under the

1 ACA. An essential component of the ACA requires the federal government to make periodic and
2 timely payments to insurance providers to reimburse them for cost-sharing reductions (CSRs) that
3 are provided to insured individuals. The next installment of CSR reimbursement payments is
4 scheduled to be paid on October 20, 2017. However, on October 12, 2017, the Trump
5 Administration abruptly announced that it would no longer make CSR payments. Accordingly,
6 the Plaintiff States seek a TRO and preliminary injunction to preserve the status quo and require
7 Defendants to continue making the CSR reimbursement payments required by the ACA pending
8 judicial resolution of this action.

9 Notice of this Ex Parte Motion has been and will be provided to Defendants as set forth in
10 the accompanying Certificate Regarding Notice to Defendants of Ex Parte Motion.

11 Dated: October 18, 2017

Respectfully submitted,

12 XAVIER BECERRA
13 Attorney General of California
14 JULIE WENG-GUTIERREZ
Senior Assistant Attorney General

15 */s/ Gregory D. Brown*

16 */s/ Nimrod P. Elias*

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