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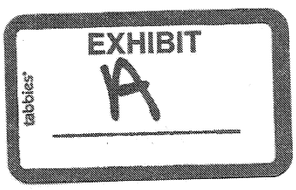

In the United States Court of Federal Claims

No. 16-259C
(Filed: July 23, 2020)

HEALTH REPUBLIC INSURANCE COMPANY,	*
Plaintiff,	*
v.	*
THE UNITED STATES,	*
Defendant.	*

ORDER

On July 17, 2020, the parties in the above-captioned case filed (1) a joint motion to divide the class into subclasses and stipulation for the entry of a partial judgment and (2) a joint status report regarding further proceedings. As set forth below, the court grants the parties' motion, adopts a schedule for further proceedings, and directs the entry of judgment pursuant to Rule 54(b) of the Rules of the United States Court of Federal Claims ("RCFC").

The Joint Motion to Divide the Class Into Subclasses

On January 3, 2017, the court certified the following class:

> All persons or entities offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2014 and 2015 benefit years, and whose allowable costs in either the 2014 or 2015 benefit years, as calculated by the Centers for Medicare and Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act). Excluded from the Class are the Defendant and its members, agencies, divisions, departments, and employees.

In light of the decision of the United States Supreme Court in Maine Community Health Options v. United States, 140 S. Ct. 1308 (2020), the parties agree that the class members are entitled "to receive payment of damages from the United States under ACA section 1342 for risk corridors benefit years 2014 and 2015." Mot. 3. They further "agree on the amount due to the Class with respect to all but four class members" and that one of the class members that does not have a dispute with the government "is not yet authorized to stipulate to judgment." Id. They therefore request that the class be divided into three subclasses pursuant to RCFC 23(c)(5) to facilitate the resolution of the class members' claims.

A

The first proposed subclass is "the 'Non-Dispute Subclass,' which consists of Class members who have no disputes with the government," id., contains all but five of the members of the existing class, and is defined as follows:

> All approved class members offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2014 and 2015 benefit years, whose allowable costs in either the 2014 or 2015 benefit years, as calculated by the Centers for Medicare & Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act), except those entities with ongoing disputes with the government concerning the amount due to the entity under Section 1342 of the Affordable Care Act, entities that dispute the government's right to offset debts against a judgment pursuant to Section 1342, or entities that disputes [sic] the extent of any such offset.

Id. at 4. Plaintiff Health Republic Insurance Company "has agreed to serve as the class representative for the Non-Dispute Subclass." Id.

The second proposed subclass is "the 'Dispute Subclass,' which consists of Class members who have a legal dispute with the government," id. at 3, and is defined as follows:

> All approved class members offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2014 and 2015 benefit years, whose allowable costs in either the 2014 or 2015 benefit years, as calculated by the Centers for Medicare & Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act), and that dispute the amount due to the entity under Section 1342 of the Affordable Care Act, and/or dispute the government's right to offset debts against a judgment pursuant to Section 1342, and/or dispute the extent of any such offset.

Id. at 4. The proposed Dispute Subclass would include Colorado Health Insurance Cooperative, Inc., Freelancers CO-OP of New Jersey, Inc., Meritus Health Partners, and Meritus Mutual Health Partners. Class member "Colorado Health Insurance Cooperative, Inc. has agreed to serve as the class representative for the Dispute Subclass." Id.

The third proposed subclass is "the 'Arches Subclass,' which consists of Arches Mutual Insurance Company, who has no legal dispute with the government but is not yet authorized to stipulate to judgment," id. at 3, by "the state court governing its liquidation," id. at 3 n.2. The proposed subclass is defined as follows:

> All approved class members offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2014 and 2015 benefit years, whose allowable costs in either the 2014 or 2015 benefit years, as calculated by the Centers for Medicare & Medicaid Services, were more than 103 percent of their

> target amounts (as those terms are defined in the Patient Protection and Affordable Care Act), and who have reached an agreement with the government related to offsets, but must seek approval from a state court prior to stipulating to judgment.

Id. at 5. Class member "Arches Mutual Insurance Company has agreed to serve as the class representative for the Arches Subclass." Id.

"When appropriate, a class may be divided into subclasses that are each treated as a class." RCFC 23(c)(5). "Subclasses may be certified . . . to isolate common issues of law or fact shared by distinct groups of plaintiffs." Haggart v. United States, 104 Fed. Cl. 484, 488 (2012). When entertaining a motion to certify subclasses, even when such a motion is made jointly by the parties, the court must determine whether each subclass satisfies the prerequisites of RCFC 23(a) and (b). Id. Specifically, a proposed subclass representative must demonstrate (i) numerosity—that the proposed subclass is so large that joinder is impracticable; (ii) commonality—that there are common questions of law or fact that predominate over questions affecting individual prospective subclass members and that the government has treated the prospective class members similarly; (iii) typicality—that its claims are typical of the proposed subclass; (iv) adequacy—that it will fairly represent the proposed subclass; and (v) superiority—that a class action is the fairest and most efficient method of resolving the suit. RCFC 23(a)-(b).

With respect to the proposed Non-Dispute Subclass, the court finds that its definition is imprecise because, as drafted by the parties, it includes a member of another proposed subclass: Arches Mutual Insurance Company. To remedy this issue, the court amends the definition as follows (amendments are underlined for the parties' convenience):

> All approved class members offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2014 and 2015 benefit years, whose allowable costs in either the 2014 or 2015 benefit years, as calculated by the Centers for Medicare & Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act), except those entities that must seek approval from a state court prior to stipulating to judgment, entities with ongoing disputes with the government concerning the amount due to the entity under Section 1342 of the Affordable Care Act, entities that dispute the government's right to offset debts against a judgment pursuant to Section 1342, and entities that dispute the extent of any such offset.

As amended, the court finds that the proposed Non-Dispute Subclass satisfies the requirements described in RCFC 23(a)-(b). In addition, although the proposed Dispute Subclass includes only four members and the proposed Arches Subclass includes only one member, the nature of these proceedings and the rationale for the creation of the subclasses supports a finding that these subclasses satisfy the requirements described in RCFC 23(a)-(b).[1] Accordingly, the court

[1] Indeed, the court is entitled to consider issues of judicial economy when certifying a class, see, e.g., Haggart, 104 Fed. Cl. at 489, and by jointly proposing the creation of the

GRANTS the parties' motion and certifies (1) the Non-Dispute Subclass, as defined by the court; (2) the Dispute Subclass, as defined by the parties; and (3) the Arches Subclass, as defined by the parties. In addition, the court appoints Quinn Emanuel Urquhart & Sullivan, LLP, who the court appointed as counsel for the original class, as counsel for each subclass.[2]

Further Proceedings in the Dispute and Arches Subclasses

With respect to the Dispute Subclass, the parties propose a schedule for briefing defendant's anticipated motion for leave to amend its answer. The court adopts the parties' proposal, as follows:[3]

- Defendant shall file its motion for leave to amend its answer **no later than Monday, August 3, 2020**.
- The subclass representative, Colorado Health Insurance Cooperative, Inc., shall file its response to defendant's motion **no later than Thursday, August 13, 2020**.
- Defendant shall file its reply in support of its motion **no later than Thursday, August 20, 2020**.

With respect to the Arches Subclass, the parties shall file, **no later than Friday, August 21, 2020**, a joint status report advising the court of the status of the request for state court approval and proposing a schedule for providing the court with periodic updates on that request.

Entry of Judgment and Further Proceedings in the Non-Dispute Subclass

With respect to the Non-Dispute Subclass, the parties jointly stipulate that "the Non-Dispute Subclass is entitled to payment from the United States under the risk corridors program for the 2014 and 2015 benefit years in the amount of $1,921,068,282.41," that defendant "is entitled to payment from Non-Dispute [Subclass] member Louisiana Health Cooperative, Inc." in the total amount of $17,406,235.22, and that the amount due to each subclass member is

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subclasses, the parties are implicitly representing that the creation of these two small subclasses provides the most efficient method of resolving the claims of the proposed subclasses' members.

[2] Although the parties did not address the appointment of counsel for the subclasses in their motion, the court is required to appoint counsel for the subclasses pursuant to RCFC 23(c)(1) and RCFC 23(c)(5). See, e.g., Haggart, 104 Fed. Cl. at 491.

[3] Notwithstanding the addition of two class representatives, the parties may, for simplicity, retain the existing case caption in their filings related to the claims of the Dispute Subclass and the Arches Subclass.

accurately set forth in the exhibit attached to their joint stipulation. The parties request that the court enter judgment in accordance with these stipulations. The court **GRANTS** that request.[4]

Pursuant to RCFC 54(b), there being no just reason for delay, the clerk shall enter judgment in favor of the Non-Dispute Subclass in the amount of $1,921,068,282.41 and judgment in favor of the United States in the amount of $17,406,235.22. The judgment in favor of the United States shall be paid through deduction from the amount owed under the judgment in favor of the Non-Dispute Subclass, such that the net amount payable by the United States to the Non-Dispute Subclass from the Judgment Fund is $1,903,662,047.19. The amount due to each member of the Non-Dispute Subclass is set forth in Exhibit A. The judgment shall be payable to JND Legal Administration, the claims administrator retained by class counsel, for distribution to the members of the Non-Dispute Subclass.[5]

In addition, plaintiff requests that the court set a schedule for determining attorney's fees and nontaxable costs payable from the Non-Dispute Subclass's net judgment proceeds pursuant to RCFC 23(h). The court **GRANTS** plaintiff's request and adopts the following schedule:

- Subclass counsel shall file a motion for an award for attorney's fees and nontaxable costs **no later than Thursday, July 30, 2020**. Pursuant to RCFC 23(h)(1), "[n]otice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner." **The notice shall be provided to subclass members promptly after the motion is filed, and shall include instructions for the submission of written objections or responses to the motion to subclass counsel.**

- Members of the Non-Dispute Subclass may object or respond to the motion. Such objections/responses **must be made in writing and submitted to subclass counsel in the manner described in the notice no later than Thursday, August 20, 2020.**

- **No later than Thursday, September 3, 2020**, subclass counsel shall file either (1) a reply that addresses all subclass member objections/responses,

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[4] In conjunction with this order, the court **FINDS** the parties' cross-motions for summary judgment (ECF No. 47 and ECF No. 52) to be **MOOT**.

[5] Plaintiff "requests that the Court direct the government to present this judgment to the Department of Treasury for payment to the Court-appointed claims administrator JND Legal Administration." First, the court has not appointed JND Legal Administration as the claims administrator. Rather, it appointed Health Republic Insurance Company as class representative and Quinn Emanuel Urquhart & Sullivan, LLP as class counsel, see ECF No. 30; RCFC 23(c)(1), who retained JND Legal Administration to serve as claims administrator. Second, defendant is not responsible for presenting the judgment to the Department of Treasury. Rather, after the entry of judgment, the clerk of court will provide plaintiff's counsel with a certified transcript of judgment and instructions for obtaining payment of the judgment from the Department of Treasury.

with every objection or response received by counsel attached to the reply as an exhibit; or (2) a status report indicating that no objections or responses were received.

IT IS SO ORDERED.

s/ Margaret M. Sweeney
MARGARET M. SWEENEY
Chief Judge

Exhibit A

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HEALTH REPUBLIC INSURANCE COMPANY,

Plaintiff,
on behalf of itself and all others similarly situated,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

Case No. 16-259C

Judge Sweeney

EXHIBIT A TO JOINT MOTION TO DIVIDE CLASS INTO SUBCLASSES AND STIPULATION FOR ENTRY OF PARTIAL JUDGMENT AS TO ONE SUBCLASS

HIOS ID	Issuer Name	Total Payments Balance	Offsets	Net RC Balance
16049	All Savers Insurance Company	$6,697,668.39		
36373	All Savers Insurance Company	$11,449,513.89		
36677	All Savers Insurance Company	$294,912.81		
39924	All Savers Insurance Company	$7,972,985.11		
85947	All Savers Insurance Company	$62,422,090.52		
92137	All Savers Insurance Company	$184,407.92		
98971	All Savers Insurance Company	$7,002,813.66		
67577	Alliance Health and Life Insurance Company	$369,880.03		
32536	ATRIO Health Plans	$589,657.01		
60536	Avera Health Plans, Inc.	$26,120,468.22		
74980	Avera Health Plans, Inc.	$913,160.23		
15287	Blue Cross & Blue Shield of Rhode Island	$381,639.63		
16842	Blue Cross and Blue Shield of Florida	$12,018,283.99		
18558	Blue Cross and Blue Shield of Kansas, Inc.	$38,218,779.37		
42690	Blue Cross and Blue Shield of Massachusetts HMO Blue, Inc.	$3,275,797.62		
26065	Blue Cross and Blue Shield of South Carolina	$11,205,576.67		
49532	BlueChoice HealthPlan of South Carolina, Inc.	$7,837,407.61		

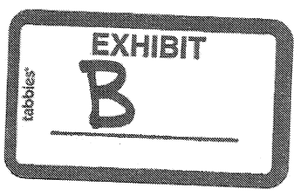
27811	BlueCross BlueShield Kansas Solutions, Inc.	$12,968,346.42		
40586	Bluegrass Family Health, Inc.	$4,440,440.13		
82569	Boston Medical Center Health Plan, Inc.	$1,445,782.89		
70285	CA Physician's Service dba Blue Shield of CA	$22,807,199.00		
45127	Capital Advantage Assurance Company	$2,505,542.65		
82795	Capital Advantage Insurance Company CAIC	$241,532.88		
10207	CareFirst BlueChoice, Inc.	$2,560,974.15		
28137	CareFirst BlueChoice, Inc.	$37,089,252.70		
45532	CareFirst of Maryland, Inc.	$12,096,305.98		
54192	CareSource Indiana, Inc.	$1,293,422.26		
45636	CareSource Kentucky Co.	$3,577,396.03		
92551	CDPHP Universal Benefits Inc.	$47,697,764.95		
47579	Chinese Community Health Plan	$593,429.63		
72034	CHRISTUS Health Plan	$134,369.02		
63312	Colorado Choice Health Plans	$6,659,644.23		
87416	Common Ground Healthcare Cooperative	$67,325,233.36		
18581	Community Health Plan of Washington	$1,187,131.21		
98905	CommunityCare HMO Inc.	$2,422,216.86		
87698	CommunityCare Life & Health Insurance Co	$761,894.83		
41895	Consumers Mutual Insurance of Michigan	$25,843,655.17		
38345	Dean Health Plan	$31,644,174.98		
66699	Denver Health Medical Plan, Inc	$380,764.18		
78124	Excellus Health Plan, Inc.	$31,028,716.81		
88806	Fallon Community Health Plan, Inc.	$1,218,752.09		
56503	Florida Health Care Plan, Inc.	$719,021.99		
22444	Geisinger Health Plan	$36,995,506.57		
75729	Geisinger Quality Options	$8,372,420.70		
94084	GHMSI	$4,445,042.32		
85408	GlobalHealth, Inc.	$6,202,344.71		
47949	Golden Rule Insurance Company	$0.00		
80473	Group Health Cooperative	$521,384.24		
34102	Group Health Plan, Inc.	$11,396,084.43		
40308	Group Hospitalization and Medical Services Inc.	$155,508.63		

27651	Gundersen Health Plan, Inc.	$394,393.50		
91058	Gundersen Health Plan, Inc.	$6,096,264.82		
27357	Health First Health Plan, Inc.	$85,751.91		
77150	Health First Insurance, Inc.	$1,708,120.48		
30252	Health Options, Inc.	$9,475,810.73		
95865	Health Plan of Nevada, Inc.	$643,589.93		
96383	Health Republic Insurance Company	$19,565,019.76		
47342	Health Tradition Health Plan	$1,385,886.58		
92036	HealthSpan	$12,878,282.88		
20126	HealthSpan Integrated Care	$21,869,077.92		
19636	HMO Louisiana, Inc.	$18,013,347.69		
21032	Kaiser Foundation Health Plan of Colo.	$64,718,412.45		
89942	Kaiser Foundation Health Plan of Georgia	$10,913,600.35		
90296	Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.	$17,630,217.35		
94506	Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.	$3,903,893.99		
95185	Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.	$34,598,194.30		
40513	Kaiser Foundation Health Plan, Inc.	$117,740,652.66		
60612	Kaiser Foundation Health Plan, Inc.	$34,324,694.58		
71287	Kaiser Foundation Healthplan of the NW	$9,821,230.13		
53789	Keystone Health Plan Central	$528,671.99		
67202	Louisiana Health Cooperative, Inc.	$63,331,147.11	$17,406,235.22	$45,924,911.89
97176	Louisiana Health Service & Indemnity Company	$73,296,024.88		
58326	MercyCare HMO, Inc.	$2,414,171.05		
35334	MercyCare Insurance Company	$1,170,713.86		
11177	MetroPlus Health Plan	$16,424,594.93		
11555	New Health Ventures Inc	$177,328.66		
82483	North Shore-LIJ Insurance Company Inc	$18,002,649.15		
20507	Optima Health Plan	$2,229,495.98		
74289	Oscar Insurance Corporation	$58,424,157.02		
50221	Oscar Insurance Corporation of New Jersey	$2,132,615.32		
48834	Oxford Health Plans (NJ), Inc.	$1,357,526.59		
10091	PacificSource Health Plans	$16,892,224.87		

23603	PacificSource Health Plans	$17,473,387.21		
60597	PacificSource Health Plans	$3,930,773.68		
65441	PHPS, Inc. (fka Phoenix Health Plans, Inc.)	$34,931.14		
50816	Physicians Health Plan of Northern Indiana, Inc.	$6,370,812.47		
58564	Physicians Plus Insurance Corporation	$171,543.34		
88102	PreferredOne Insurance Company	$45,727,888.21		
26734	Premier Health Plan, Inc.	$2,572,926.75		
57173	Presbyterian Health Plan, Inc.	$2,063,703.11		
29698	Priority Health	$14,688,532.68		
29241	Priority Health Insurance Company (PHIC)	$5,678,007.91		
16698	Prominence HealthFirst	$501,439.74		
56707	Providence Health Plan	$7,302,569.66		
70525	QCA Health Plan, Inc.	$3,957,601.38		
37903	QualChoice Life & Health Insurance Company, Inc.	$4,524,487.98		
80208	Rocky Mountain Health Care Options	$366,780.94		
97879	Rocky Mountain HMO	$34,831,063.53		
38166	Security Health Plan of Wisconsin, Inc.	$36,886,330.97		
26002	SelectHealth	$60,598,770.69		
68781	SelectHealth	$180,603,493.13		
26539	SHA, LLC DBA FirstCare Health Plans	$7,356,449.15		
92499	Sharp Health Plan	$37,507.58		
62210	South Dakota State Medical Holding Company, Inc.	$13,269,548.73		
52664	Summa Insurance Company, Inc.	$2,091,574.38		
14650	Time Insurance Company	$494,806.51		
19068	Time Insurance Company	$1,450,728.94		
19524	Time Insurance Company	$4,045,974.64		
20544	Time Insurance Company	$7,352,482.72		
24867	Time Insurance Company	$253,920.36		
28020	Time Insurance Company	$7,661,197.18		
29176	Time Insurance Company	$568,168.32		
29211	Time Insurance Company	$7,321,151.53		
39996	Time Insurance Company	$1,451,025.54		
42260	Time Insurance Company	$925,446.08		
60299	Time Insurance Company	$234,775.92		

62662	Time Insurance Company	$61,174,353.15		
67807	Time Insurance Company	$1,111,551.75		
80863	Time Insurance Company	$7,624,448.10		
89029	Time Insurance Company	$431,897.82		
91842	Time Insurance Company	$4,618,815.85		
29125	Tufts Associated Health Maintenance Org	$285,907.70		
85736	UCare Minnesota	$10,464,932.43		
71667	UnitedHealthcare Community Plan, Inc.	$144,054.47		
31779	UnitedHealthcare Insurance Company	$166,087.58		
49650	UnitedHealthcare Insurance Company	$497,317.92		
45002	UnitedHealthcare Life Insurance Company	$27.28		
59809	UnitedHealthcare Life Insurance Company	$6,577.07		
68259	UnitedHealthcare of Alabama, Inc.	$8,688,275.81		
68398	UnitedHealthcare of Florida, Inc.	$42,820,458.16		
43802	UnitedHealthcare of Georgia, Inc.	$12,145,393.47		
23671	UnitedHealthcare of Kentucky, Ltd.	$13,606.24		
38499	UnitedHealthcare of Louisiana, Inc.	$4,251,825.74		
97560	UnitedHealthcare of Mississippi, Inc.	$809,174.17		
79881	UnitedHealthcare of New England, Inc.	$635.07		
54235	UnitedHealthcare of New York, Inc.	$909,112.89		
54332	UnitedHealthcare of North Carolina, Inc	$18,401,376.06		
33931	UnitedHealthcare of Ohio, Inc.	$902,297.30		
24872	UnitedHealthcare of Pennsylvania, Inc.	$5,937,531.25		
21066	UnitedHealthcare of the Mid-Atlantic Inc	$14,598.52		
31112	UnitedHealthcare of the Mid-Atlantic Inc	$128,553.76		
16724	UnitedHealthcare of the Midwest, Inc.	$115,915.27		
66413	UnitedHealthcare of Utah, Inc.	$6,697.41		
37833	Unity Health Plans Insurance Corporation	$11,131,237.20		
88925	University of Arizona Health Plans-University Healthcare, Inc.	$1,750,150.59		

75293	USAble Mutual Insurance Company	$15,919,592.28		
67243	Vantage Health Plan, Inc.	$1,785,495.97		
93689	Western Health Advantage	$176,519.93		
TOTAL		**$1,921,068,282.41**	**$17,406,235.22**	**$1,903,662,047.19**



EXHIBIT
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19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NUMBER: 641 928 SECTION: 26

JAMES J. DONELON
COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA

VERSUS

LOUISIANA HEALTH COOPERATIVE, INC.

FILED: STATE
APR - 3 2017 DEPUTY CLERK
BY DEPUTY CLERK OF COURT

NOTICE OF INTENT TO PARTICIPATE IN CLASS ACTION LAWSUIT FOR RECOVERY OF RISK CORRIDOR PAYMENTS OWED TO LAHC

NOW INTO COURT, through undersigned counsel, comes James Donelon, Commissioner of Insurance for the State of Louisiana, in his capacity as Rehabilitator, (hereinafter referred to as "the Commissioner"), and Billy Bostick, Court appointed Receiver, of Louisiana Health Cooperative, Inc. in Rehabilitation ("LAHC"), who hereby gives notice of LAHC's intent to participate in pending class action litigation for recovery of Risk Corridor payments[1] due to LAHC from the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services ("CMS") in the matter entitled *"Health Republic Insurance Company v. United States of America"*, case number 1:16-cv-00259-MMS, on the docket of the United States Court of Federal Claims filed on February 24, 2016 (the "Health Republic Class Action Suit"), and certified as a class action opt-in suit by order of the Court on January 3, 2017, without opposition from CMS. See attached order of January 3, 2017, **Exhibit A**, which provided for notice to each Qualified Health Plan ("QHP") operating under the ACA of the right to opt into the class action suit to seek recovery of Risk Corridor payments due under the ACA. See attached Notice and Class Action Opt-in Notice Form, attached as **Exhibit B**, which was received by LAHC on or about March 14, 2017.

NOTICE IS HEREBY GIVEN of the intent of LAHC to participate in the Health Republic Class Action suit for recovery of Risk Corridor payments LAHC claims are owed to LAHC by CMS for LAHC's operations as a QHP for plan years 2014 and 2015.

EBR4053926

[1] The Patient Protection and Affordable Care Act, Public Law 111-148) (the "ACA"), provided for certain payments to Qualified Health Plans ("QHP") for losses sustained during the first three years of the ACA implementation, 2014 to 2017, ACA section 1343 and implementing federal regulation, 45 CFR 153.510.

B

Respectfully Submitted,

JEFF LANDRY
ATTORNEY GENERAL

BY: _____

Michael Charles Guy (25406)
Assistant Attorney General
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BURGLASS & TANKERSLEY, LLC

BY: _____

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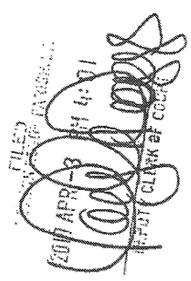
Telefax: (504) 836-2221
Attorneys for ***JAMES J. DONELON, Commissioner of Insurance for the State of Louisiana as Rehabilitator of Louisiana Health Cooperative, Inc. in Rehabilitation***

CERTIFICATE OF SERVICE

I hereby certify that I have not served a copy of the foregoing pleading on any counsel in these proceedings because there are no other parties in these proceedings, this 3rd day of April, 2017.



Respectfully Submitted,

JEFF LANDRY
ATTORNEY GENERAL

BY: _____
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P.O. Box 94005
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BY: _____
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Telefax: (504) 836-2221
Attorneys for ***JAMES J. DONELON, Commissioner of Insurance for the State of Louisiana as Rehabilitator of Louisiana Health Cooperative, Inc. in Rehabilitation***

CERTIFICATE OF SERVICE

I hereby certify that I have not served a copy of the foregoing pleading on any counsel in these proceedings because there are no other parties in these proceedings, this ___ day of April, 2017.

_____

In the United States Court of Federal Claims

No. 16-259C
(Filed: January 3, 2017)

****
HEALTH REPUBLIC INSURANCE COMPANY, *
*
Plaintiff, *
*
v. *
*
THE UNITED STATES, *
*
Defendant. *
****

ORDER

Plaintiff filed the above-captioned case as a putative class action on February 24, 2016. Thereafter, on October 5, 2016, plaintiff moved to certify the case as a class action pursuant to Rule 23 of the Rules of the United States Court of Federal Claims ("RCFC"). On December 23, 2016, defendant filed a response to plaintiff's motion indicating that it "does not dispute that the class as proposed [by plaintiff] satisfies the requirements for certification under" RCFC 23. Accordingly, on that same date, plaintiff filed an unopposed motion for the entry of an order granting its class certification motion and setting deadlines for submitting "a proposed notice plan and opt-in schedule . . . ." Plaintiff's unopposed motion is **GRANTED**, namely:

1. Pursuant to RCFC 23, a putative class representative must demonstrate: (i) numerosity–that the proposed class is so large that joinder is impracticable; (ii) commonality–that there are common questions of law or fact that predominate over questions affecting individual prospective class members and that the government has treated the prospective class members similarly; (iii) typicality–that his or her claims are typical of the proposed class; (iv) adequacy–that he or she will fairly represent the proposed class; and (v) superiority–that a class action is the fairest and most efficient method of resolving the suit. RCFC 23(a)-(b); Toscano v. United States, 98 Fed. Cl. 152, 155 (2011); Barnes v. United States, 68 Fed. Cl. 492, 494 (2005). Based on its review of plaintiff's motion for class certification and supporting exhibits, and in light of defendant's representation that it does not dispute the basis for plaintiff's motion, the court concludes that plaintiff has satisfied the requirements of RCFC 23. It therefore **GRANTS** plaintiff's motion and certifies the following class:

> All persons or entities offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2014 and 2015 benefit years, and whose allowable

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costs in either the 2014 or 2015 benefit years, as calculated by the Centers for Medicare and Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act). Excluded from the Class are the Defendant and its members, agencies, divisions, departments, and employees.

2. The class claim is for amounts allegedly owed to the class by the United States pursuant to section 1342 of the Patient Protection and Affordable Care Act and 45 C.F.R. § 153.510(b).

3. Defendant, in agreeing to certification of the class as defined above, has not waived the right to move for decertification or to move for the class to be divided into subclasses if, as this case develops, the circumstances warrant such a motion. Further, defendant has not waived (1) any arguments that it raised in its pending motion to dismiss filed on June 24, 2016; (2) the right to dispute any material fact or to contest any theory of liability under section 1342 of the Patient Protection and Affordable Care Act and 45 C.F.R. § 153.510; or (3) the right to contest whether any particular person or entity falls within the class or is otherwise entitled to relief.

4. Plaintiff is designated as the class representative.

5. Pursuant to RCFC 23(c)(1)(B) and RCFC 23(g), the court appoints Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel") as lead counsel for the class, having previously determined in its October 25, 2016 order appointing Quinn Emanuel as interim class counsel that the requirements of RCFC 23(g) are fully satisfied.[1] The duties of lead counsel shall be the same as the duties designated to Quinn Emanuel while serving as interim class counsel.

6. Defendant, by **no later than Friday, January 13, 2017**, shall provide to plaintiff a list of potential class members, which shall include all entities that offered Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2014 and 2015 benefit years, and whose allowable costs in either the 2014 or 2015 benefit years, as calculated by the Centers for Medicare and Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act). The list shall include the name of the individual or entity that is a potential class member; the current or last known electronic-mail address of the individual or entity (providing name and email of person responsible for risk corridors receivables, if known); and the current or last known mailing address of the individual or entity.

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[1] Notwithstanding the appointment of Quinn Emanuel as class counsel, all filings made on behalf of the class shall continue to be signed by the attorney of record for the class representative. See RCFC 83.1(c)(1)-(2) ("A party may have only one attorney of record in a case at any one time . . . . All filings must be signed in the attorney of record's name.").

7. If, after January 13, 2017, plaintiff discovers the identity of additional potential class members to whom plaintiff believes that notice should be provided, plaintiff shall promptly inform defendant. Defendant shall have an opportunity to object to any additional potential class members **within seven calendar days** from the date that plaintiff identifies the newly discovered potential class members by forwarding its objections to plaintiff via electronic mail. If the parties are unable to resolve any of defendant's objections to the newly discovered potential class members, they shall file a joint motion setting out in separate sections their respective positions for resolution by the court.

8. Lead counsel shall submit to the court a proposed notice plan and opt-in schedule that complies with the requirements of RCFC 23(c)(2)(B) by **no later than Monday, January 23, 2017**.

IT IS SO ORDERED.

s/ Margaret M. Sweeney
MARGARET M. SWEENEY
Judge

Class Action Opt-In Notice Form

UNITED STATES COURT OF FEDERAL CLAIMS
Health Republic Insurance Company v. United States
Case No. 16-259C

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) by Friday, May 12, 2017.**

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 2014 and/or 2015 benefit year(s), and whose allowable costs in either the 2014 or 2015 benefit years, as calculated by the Centers for Medicare and Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act).

_____

Plan year(s) for which this issuer offered Qualified Health Plan(s) under the Affordable Care Act:

_____

3. Please fill in the following information.

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:

_____

_____

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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 into the Class Action lawsuit against the United States described in the accompanying Notice (*Health Republic Insurance Company 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 2014 and/or 2015 benefit year(s), and its allowable costs in either the 2014 or 2015 benefit years, as calculated by the Centers for Medicare and Medicaid Services, were more than 103 percent of its target amounts (as those terms are defined in the Patient Protection and Affordable Care Act); 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 full risk corridors payments on an annual basis 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.riskcorridorsclassaction.com/optin
- A copy of the Class Action Opt-In Notice Form may also be downloaded at this URL.

By Courier: Risk Corridors Class Action
c/o JND Class Action Administration
6521 West 91st Ave.
Westminster, CO 80031

By Mail: Risk Corridors Class Action
c/o JND Class Action Administration
PO Box 6878
Broomfield, CO 80021

By Facsimile: 1-866-214-0156