

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

NEW MEXICO HEALTH	)	
CONNECTIONS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:16-cv-00878-JB-WPL
	)	
UNITED STATES DEPARTMENT	)	
OF HEALTH AND HUMAN	)	
SERVICES, <i>et al.</i> ,	)	
	)	
Defendants. <sup>1</sup>	)	
	)	

**DEFENDANTS' ANSWER TO AMENDED COMPLAINT**

The Defendants hereby submit their Answer to the Amended Complaint. The Defendants note that, for the aspects of the Amended Complaint over which this Court has jurisdiction, the Court's review shall be solely on the administrative record, not on the allegations of the parties in their respective pleadings.

The Defendants respond to the first unnumbered paragraph of the Amended Complaint as follows: This paragraph contains only a characterization of the Amended Complaint, to which no response is required.

The Defendants respond to the numbered paragraphs of the Amended Complaint as follows.

1. Admit that Congress enacted the Patient Protection and Affordable Care Act (“ACA”) in 2010; the remainder of the paragraph contains only a characterization of the ACA, to which no response is required.

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<sup>1</sup> Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Secretary Thomas E. Price, M.D., and Acting Administrator Patrick Conway are automatically substituted for their predecessors, Sylvia Mathews Burwell and Andrew M. Slavitt.

2. This paragraph contains only a characterization of the ACA, to which no response is required.

3. Admit.

4. The Defendants lack information or knowledge sufficient to admit or deny Plaintiff's description of itself in this paragraph.

5. As to the first sentence, admit that Plaintiff covers approximately 44,000 members.

The Defendants lack information or knowledge sufficient to admit or deny Plaintiff's description of itself and its customers in the remainder of this paragraph.

6. The Defendants lack information or knowledge sufficient to admit or deny Plaintiff's description of itself and its customers in this paragraph.

7. The Defendants lack information or knowledge sufficient to admit or deny Plaintiff's description of itself and its customers in this paragraph.

8. To the extent this paragraph describes Plaintiff's business, it contains only a characterization, to which no response is required, of the factual allegations in the preceding paragraphs. As to the remainder of the paragraph, deny.

9. This paragraph contains only a characterization of the ACA and a CMS regulation, to which no response is required.

10. This paragraph contains only a characterization of the ACA and a CMS discussion paper, to which no response is required.

11. This paragraph contains only a characterization of statements on Plaintiff's website, which speak for themselves and to which no response is required.

12. The first sentence contains only a legal conclusion, to which no response is required. As to the remainder of the paragraph, deny.

13. This paragraph contains only characterizations, to which no response is required, of allegations in the preceding paragraphs.

14. Admit the first sentence. As to the second sentence, admit that Blue Cross Blue Shield of New Mexico (“BCBSNM”) was deemed eligible to receive approximately \$7.5 million in risk adjustment payments for benefit year 2014 and that risk adjustment payments to issuers are funded from risk adjustment charges on other issuers within a risk pool.

15. As to the first sentence, admit that Plaintiff was required to pay risk adjustment charges of approximately \$14.6 million for benefit year 2015; the remainder of the sentence is merely a characterization of that fact, to which no response is required. As to the second sentence, admit only that BCBSNM was deemed eligible to receive approximately \$18.3 million in risk adjustment payments for benefit year 2015 and that risk adjustment payments to issuers are funded from risk adjustment charges on other issuers within a risk pool, but otherwise deny.

16. As to the first sentence, the Defendants lack information or knowledge sufficient to admit or deny the hopes of successful companies. Deny the second sentence.

17. As to the first sentence, the Defendants lack information or knowledge sufficient to admit or deny the needs of BCBSNM. The second sentence contains only a characterization, to which no response is required, of the factual allegations in the preceding paragraphs. As to the third sentence, admit that BCBSNM is a subsidiary of Health Care Services Corporation (“HCSC”). The remainder of the paragraph is merely a characterization of statements by the credit rating agency A.M. Best, which speak for themselves and to which no response is required.

18. This paragraph contains only a characterization, to which no response is required, of the factual allegations in the preceding paragraph.

19. The first sentence contains a rhetorical question, to which no response is required.

The second sentence contains only a characterization of CMS regulations, to which no response is required. Deny the third sentence.

20. This paragraph contains only a characterization of the ACA and CMS regulations, which speak for themselves and to which no response is required.

21. As to the first sentence, admit that the Statewide Average Premium is higher than Plaintiff's premiums; otherwise deny. The Defendants lack information or knowledge sufficient to admit or deny Plaintiff's characterization of its business practices in the remainder of the paragraph.

22. The Defendants lack information or knowledge sufficient to admit or deny Plaintiff's characterization in this paragraph of why its members are healthier than average. The remainder of the paragraph contains only a characterization of CMS regulations, to which no response is required.

23. The first, second, and third sentences contain only legal conclusions, to which no response is required. Deny the fourth sentence. The fifth sentence contains only a characterization, to which no response is required, of allegations in this and preceding paragraphs. Deny the sixth sentence.

24. This paragraph contains only a characterization of CMS regulations, which speak for themselves and to which no response is required.

25. This paragraph contains only characterizations of a white paper, which speaks for itself and to which no response is required.

26. The first and second sentences contain only characterizations, to which no response is required, of factual allegations in the third and fourth sentences. As to the third sentence, admit that Oregon Health CO-OP, HealthyCT, and Land of Lincoln have announced that they will close

their businesses. As to the fourth sentence, admit that Moda Health has announced that it will exit the individual market in Alaska and that Preferred Medical is off the exchange in Florida. As to the fifth sentence, admit that Health Republic of New Jersey has closed; the Defendants lack information or knowledge sufficient to admit or deny the remainder of the sentence. The remainder of the paragraph contains only characterizations, to which no response is required, of allegations in the preceding sentences.

27. This paragraph contains only characterizations of the cited article, which speaks for itself and to which no response is required.

28. This paragraph contains only characterizations of court testimony, which speaks for itself and to which no response is required.

29. The first sentence contains only a characterization, to which no response is required, of allegations in the preceding paragraph. The second sentence introduces a chart characterizing issuer rate filings, which speak for themselves and to which no response is required.

30. The first sentence contains only characterizations of the ACA and CMS regulations, to which no response is required. The second sentence contains only characterizations of the allegations of the preceding paragraph, to which no response is required.

31. The first sentence contains only a characterization of the allegations in the second sentence. As to the second sentence, admit only that some insurance companies have raised their rates for individual insurance products in 2017; otherwise deny.

32. This paragraph contains only a characterization of CMS regulations, to which no response is required.

33. As to the first sentence, admit that Presbyterian Health Plan has exited the individual exchange in New Mexico. As to the second sentence, admit that United Health Care,

Assurant, and Humana have either exited, or announced an intention to exit, certain individual exchanges. As to the third sentence, the Defendants lack information or knowledge sufficient to admit or deny Plaintiff's allegations about what might happen in the future. The fourth sentence contains only a characterization of the preceding sentence, to which no response is required. As to the fifth sentence, admit only that the State of Alaska has provided subsidies to certain exchange issuers; otherwise deny. The Defendants lack information or knowledge sufficient to admit or deny Plaintiff's allegations in the sixth sentence.

34. Admit that state insurance regulators have submitted comments and feedback regarding the risk adjustment program.

35. This paragraph contains only a characterization of congressional testimony, which speaks for itself and to which no response is required.

36. This paragraph contains only a characterization of congressional testimony, which speaks for itself and to which no response is required.

37. This paragraph contains only a characterization of a press release issued by the Connecticut Insurance Department, which speaks for itself and to which no response is required.

38. The first sentence contains only a characterization of a letter from New York's Superintendent of Financial Services, which speaks for itself and to which no response is required. The remainder of the paragraph contains only characterizations of a press release issued by the New York Department of Financial Services, which speaks for itself and to which no response is required.

39. This paragraph contains only characterizations of congressional testimony, which speaks for itself and to which no response is required.

40. This paragraph contains only characterizations of an administrative order issued by

the Illinois Department of Insurance, which speaks for itself and to which no response is required.

41. This paragraph contains only a characterization of regulations and the rulemaking process, which speak for themselves and to which no response is required.

42. This paragraph contains only a characterization of several regulations and agency documents, which speak for themselves and to which no response is required.

43. This paragraph contains only a characterization of several regulations and agency documents, which speak for themselves and to which no response is required.

44. Admit that Plaintiff and other insurance companies submitted comments regarding the 2018 Proposed Rule.

45. This paragraph contains only characterizations of a comment submitted by Plaintiff, which speaks for itself and to which no response is required.

46. Admit the first sentence. The remainder of the paragraph contains only characterizations of a CMS regulation, which speaks for itself and to which no response is required.

47. This paragraph contains only characterizations of a CMS regulation, which speaks for itself and to which no response is required.

48. This paragraph contains only characterizations of a CMS regulation, which speaks for itself and to which no response is required.

49. This paragraph contains only characterizations of a CMS regulation, which speaks for itself and to which no response is required.

50. This paragraph contains only characterizations of a CMS regulation, which speaks for itself and to which no response is required.

51. As to the first sentence, the Defendants lack information or knowledge sufficient to admit or deny Plaintiff's reasons for bringing this action. As to the remainder of the paragraph,

deny.

52. This paragraph contains only conclusions of law, and not averments of fact to which a response would be required.

53. This paragraph contains only conclusions of law, and not averments of fact to which a response would be required.

54. Admit.

55. Admit that Defendant United States Department of Health and Human Services (the “Department”) is responsible for overseeing the administration of certain provisions of the ACA.

56. Admit that the Department has delegated certain responsibilities of the Department, including oversight of the risk adjustment program, to the Centers for Medicare and Medicaid Services (“CMS”).

57. As to the first sentence, deny that Sylvia Mathews Burwell is the Secretary of the Department but admit that Defendant Thomas E. Price, M.D., who has been substituted in her place, is the Secretary of the Department; the remainder of the sentence is a conclusion of law, to which no response is required. The second sentence contains only a characterization of the Amended Complaint, which speaks for itself, and to which no response is required.

58. As to the first sentence, deny that Andrew M. Slavitt is the Acting Administrator of CMS but admit that Defendant Patrick Conway, who has been substituted in his place, is the Acting Administrator of CMS; the remainder of the sentence is a conclusion of law, to which no response is required. The second sentence contains only a characterization of the Amended Complaint, which speaks for itself, and to which no response is required.

59. The first sentence contains only a characterization of the Amended Complaint, which speaks for itself, and to which no response is required. Admit the second sentence.

60. This paragraph contains only a characterization of the ACA and a Bloomberg article, which speak for themselves and to which no response is required.

61. This paragraph contains only a characterization of court testimony, which speaks for itself and to which no response is required.

62. This paragraph contains only a characterization of the ACA, which speaks for itself and to which no response is required.

63. This paragraph contains only a characterization of the ACA, which speaks for itself and to which no response is required.

64. This paragraph contains only characterizations of the ACA and a CMS publication, which speak for themselves and to which no response is required.

65. This paragraph contains only a characterization of the Amended Complaint, which speaks for itself and to which no response is required.

66. This paragraph contains only a characterization of the ACA and a CMS publication, which speak for themselves and to which no response is required.

67. The first sentence contains only a characterization of the ACA, which speaks for itself and to which no response is required. As to the second sentence, admit that CMS is administering the risk adjustment program in New Mexico.

68. This paragraph contains only a characterization of the ACA, which speaks for itself and to which no response is required.

69. This paragraph contains only a characterization of the ACA, which speaks for itself and to which no response is required.

70. Deny.

71. This paragraph contains only a characterization of the ACA and the cited document,

which speak for themselves and to which no response is required.

72. This paragraph contains only a characterization of the ACA, which speaks for itself and to which no response is required.

73. This paragraph contains only a characterization of the ACA, which speaks for itself and to which no response is required.

74. The Defendants lack information or knowledge sufficient to admit or deny Plaintiff's description of itself in this paragraph.

75. Admit.

76. This paragraph contains only a characterization of a loan agreement, which speaks for itself and to which no response is required.

77. This paragraph contains only a characterization of a loan agreement, which speaks for itself and to which no response is required.

78. The Defendants lack information or knowledge sufficient to admit or deny Plaintiff's description of itself in this paragraph.

79. The Defendants lack information or knowledge sufficient to admit or deny Plaintiff's description of itself in this paragraph.

80. The Defendants lack information or knowledge sufficient to admit or deny Plaintiff's description of itself in this paragraph.

81. The Defendants lack information or knowledge sufficient to admit or deny Plaintiff's description of itself in this paragraph.

82. The Defendants lack information or knowledge sufficient to admit or deny Plaintiff's description of itself in this paragraph.

83. The Defendants lack information or knowledge sufficient to admit or deny

Plaintiff's description of itself in this paragraph.

84. The first sentence contains only a characterization, to which no response is required, of allegations in the second sentence. The Defendants lack information or knowledge sufficient to admit or deny Plaintiff's description of itself in the second sentence. The third sentence contains only a characterization of public statements of the former Secretary of the Department, which speak for themselves and to which no response is required.

85. The first sentence contains only a characterization, to which no response is required, of allegations in the second sentence. The second sentence contains only characterizations, to which no response is required, of an operational review conducted by Deloitte Consulting and statements allegedly made by a Deloitte team leader in the course of that review.

86. This paragraph contains only a characterization of a white paper, which speaks for itself and to which no response is required.

87. This paragraph contains only a characterization of a white paper, which speaks for itself and to which no response is required.

88. The Defendants lack information or knowledge sufficient to admit or deny Plaintiff's allegation in the first sentence. The second sentence contains only a legal conclusion, and not averments of fact to which a response would be required.

89. The first and second sentences contain only rhetorical statements, to which no responses are required. The third sentence contains only a characterization, to which no response is required, of allegations in preceding paragraphs. The Defendants lack information or knowledge sufficient to admit or deny Plaintiff's internal mental processes, as alleged in the fourth sentence.

90. The Defendants lack information or knowledge sufficient to admit or deny Plaintiff's characterization of its financial performance in 2016. As to the remainder of the

paragraph, deny.

91. As to the first sentence, admit that some of Plaintiff's enrollees qualify for subsidies through the individual market exchange and that Plaintiff was required to pay risk adjustment charges in 2016; otherwise deny. The Defendants lack information or knowledge sufficient to admit or deny the allegations in the second sentence.

92. Deny.

93. Deny.

94. This paragraph contains only a characterization of the ACA, which speaks for itself and to which no response is required.

95. This paragraph contains only a legal conclusion, not averments of fact to which a response would be required.

96. This paragraph contains only characterizations of CMS regulations, which speak for themselves and to which no response is required.

97. Admit.

98. Deny, and note that many insurers have sources of funds other than enrollee premiums.

99. As to the first and second sentences, deny, and note that many insurers have sources of funds other than enrollee premiums. As to the third sentence, admit that competition puts pressure on insurers to cut costs.

100. This paragraph contains only a characterization of the ACA, which speaks for itself and to which no response is required.

101. This paragraph contains only a characterization of the ACA and CMS regulations, which speak for themselves and to which no response is required.

102. This paragraph contains only a characterization of CMS regulations and documents, which speak for themselves and to which no response is required.

103. Deny the first and second sentences. The third sentence contains only a characterization of CMS regulations, which speak for themselves and to which no response is required.

104. This paragraph contains only a characterization of a regulation and CMS documents, which speak for themselves and to which no response is required.

105. This paragraph contains only a characterization of a regulation, which speaks for itself and to which no response is required.

106. This paragraph contains only a characterization of a regulation, which speaks for itself and to which no response is required.

107. Deny.

108. Admit only that in 2015, the monthly Statewide Average Premium for the State of New Mexico was \$314.00 and NMHC's individual average premium was \$270.00 per month; otherwise deny.

109. Deny.

110. This paragraph contains only a characterization of a CMS regulation, which speaks for itself and to which no response is required.

111. This paragraph contains only a characterization of a CMS regulation, which speaks for itself and to which no response is required.

112. As to the first three sentences, deny. The Defendants lack information or knowledge sufficient to admit or deny Plaintiff's characterization of its premiums in the remainder of the paragraph.

113. This paragraph contains only a characterization of the ACA and the cited document, which speak for themselves and to which no response is required.

114. This paragraph contains only a characterization of a CMS regulation, which speaks for itself and to which no response is required.

115. This paragraph contains only characterizations of CMS documents and regulations, which speak for themselves and to which no response is required.

116. This paragraph contains only characterizations of a white paper, which speaks for itself and to which no response is required.

117. The first two sentences contain only characterizations of CMS documents and regulations, which speak for themselves and to which no response is required. The third sentence contains only a characterization of the ACA, to which no response is required.

118. The first sentence contains only characterizations of CMS regulations, which speak for themselves and to which no response is required. Deny the second sentence.

119. Deny the first and second sentences. The third sentence contains only a characterization of a CMS rule, which speaks for itself and to which no response is required.

120. This paragraph contains only characterizations of a CMS discussion paper, which speaks for itself and to which no response is required.

121. This paragraph contains only characterizations of a CMS discussion paper, which speaks for itself and to which no response is required.

122. This paragraph contains only characterizations of CMS regulations and documents, which speak for themselves and to which no response is required.

123. This paragraph contains only characterizations of a CMS regulation, which speaks for itself and to which no response is required.

124. This paragraph contains only characterizations of a CMS regulation, which speaks for itself and to which no response is required.

125. The first sentence contains only a characterization of comments to a CMS regulation, which speak for themselves and to which no response is required. Deny the second and third sentences. The fourth sentence contains only a characterization of a CMS regulation, which speaks for itself and to which no response is required. Deny the remainder of the paragraph.

126. This paragraph contains only characterizations of a CMS regulation, which speaks for itself and to which no response is required.

127. This paragraph contains only characterizations of a CMS regulation, which speaks for itself and to which no response is required.

128. This paragraph contains only characterizations of the ACA and a CMS regulation, which speak for themselves and to which no response is required.

129. This paragraph contains only characterizations of a CMS regulation, which speaks for itself and to which no response is required.

130. This paragraph contains only a conclusion of law, not averments of fact to which a response would be required.

131. The first sentence contains only a conclusion of law, not averments of fact to which a response would be required. The remainder of this paragraph contains only characterizations of the ACA and CMS statements, which speak for themselves and to which no response is required.

132. Deny.

133. This paragraph contains only characterizations of the ACA, which speaks for itself and to which no response is required.

134. The first four sentences contain only characterizations of the ACA, which speaks

for itself and to which no response is required. As to the fifth sentence, admit only that, all else being equal and as a general economic matter, consumers that do not anticipate significant health care needs have a greater incentive to choose plans with more significant cost-sharing requirements than do consumers that anticipate significant health care needs.

135. This sentence contains only a characterization of CMS regulations, which speak for themselves and to which no response is required.

136. This paragraph contains only a characterization of a CMS document, which speaks for itself and to which no response is required.

137. As to the first sentence, deny. The second sentence contains only a characterization of the third sentence, to which no response is required. The Defendants lack knowledge or information sufficient to admit or deny Plaintiff's allegations about itself in the third sentence.

138. The first sentence contains only characterizations of CMS regulations, which speak for themselves and to which no response is required. Deny the second sentence.

139. Deny.

140. This paragraph contains only characterizations of a CMS regulation and public comments to the CMS regulation, which speak for themselves and to which no response is required.

141. This paragraph contains only conclusions of law, not averments of fact to which a response would be required.

142. This paragraph contains only conclusions of law, not averments of fact to which a response would be required.

143. This paragraph contains only characterizations of CMS regulations, which speak for themselves and to which no response is required.

144. This paragraph contains only characterizations of CMS regulations, which speak for themselves and to which no response is required.

145. This paragraph contains only characterizations of CMS regulations, which speak for themselves and to which no response is required.

146. This paragraph contains only characterizations of CMS regulations, which speak for themselves and to which no response is required.

147. This paragraph contains only characterizations of CMS regulations, which speak for themselves and to which no response is required.

148. This paragraph contains only characterizations of CMS regulations, which speak for themselves and to which no response is required.

149. This paragraph contains only characterizations of CMS regulations, which speak for themselves and to which no response is required.

150. The first two sentences contain only characterizations of CMS regulations, to which no response is required. The Defendants lack knowledge or information sufficient to admit or deny Plaintiff's allegations about itself in the remainder of the paragraph.

151. This paragraph contains only characterizations of CMS regulations, which speak for themselves and to which no response is required.

152. This paragraph contains only characterizations of the cited document, which speaks for itself and to which no response is required.

153. This paragraph contains only characterizations of the cited document, which speaks for itself and to which no response is required.

154. This paragraph contains only characterizations of a CMS regulation, which speaks for itself and to which no response is required.

155. This paragraph contains only characterizations of the cited document, which speaks for itself and to which no response is required.

156. This paragraph contains only characterizations of a CMS regulation, which speaks for itself and to which no response is required.

157. This paragraph contains only characterizations of a CMS regulation, which speaks for itself and to which no response is required.

158. This paragraph contains only characterizations of a CMS regulation, which speaks for itself and to which no response is required.

159. Deny.

160. The first two sentences contain conclusions of law, not averments of fact to which a response would be required. Deny the remainder of the paragraph.

161. This paragraph contains only characterizations of CMS regulations, which speak for themselves and to which no response is required.

162. This paragraph contains only characterizations of CMS regulations, which speak for themselves and to which no response is required.

163. This paragraph contains only characterizations of CMS regulations, which speak for themselves and to which no response is required.

164. This paragraph contains only characterizations of CMS regulations, which speak for themselves and to which no response is required.

165. This paragraph contains only characterizations of CMS regulations, which speak for themselves and to which no response is required.

166. This paragraph contains only characterizations of CMS regulations, which speak for themselves and to which no response is required.

167. This paragraph contains only characterizations of a CMS regulation, which speaks for itself and to which no response is required.

168. This paragraph contains only a legal conclusion, not averments of fact to which a response would be required.

169. This paragraph contains only characterizations of CMS regulations, which speak for themselves and to which no response is required.

170. This paragraph contains only characterizations of CMS regulations, which speak for themselves and to which no response is required.

171. This paragraph contains only characterizations of CMS regulations, which speak for themselves and to which no response is required.

172. This paragraph contains only characterizations of CMS regulations, which speak for themselves and to which no response is required.

173. The Defendants lack information or knowledge sufficient to admit or deny Plaintiff's allegations about itself and its members in this paragraph.

174. The first sentence contains only Plaintiff's characterization, to which no response is required, of factual allegations in other paragraphs. The second sentence contains Plaintiff's characterization of CMS documents and regulations, which speak for themselves and to which no response is required.

175. This paragraph contains only a characterization of a CMS regulation, which speaks for itself and to which no response is required.

176. This paragraph contains only conclusions of law, not averments of fact to which a response would be required.

177. Admit only that Plaintiff has submitted comments regarding the risk adjustment

program.

178. Admit.

179. Admit that Plaintiff has submitted comments regarding the risk adjustment program. The remainder of this paragraph contains only characterizations of those comments, which speak for themselves and to which no response is required.

180. This paragraph contains only characterizations of the cited document, which speaks for itself and to which no response is required.

181. This paragraph contains only characterizations of the cited document, which speaks for itself and to which no response is required.

182. Admit the first sentence. The remainder of the paragraph contains only characterizations of the cited document, which speaks for itself and to which no response is required.

183. Admit only that Plaintiff submitted a comment on the risk adjustment program on October 6, 2016, and that Plaintiff's CEO has held discussions with CMS officials regarding the risk adjustment program; otherwise deny.

184. Admit that CMS held public meetings and discussions regarding the risk adjustment program, including a conference following publication of the March 2016 white paper. The remainder of the paragraph contains only characterizations of a CMS regulation, to which no response is required.

185. The first two sentences contain only characterizations of a CMS regulation, to which no response is required. The Defendants lack information or knowledge sufficient to admit or deny Plaintiff's description of its reasons for filing this lawsuit in the third sentence.

**COUNT ONE**

**(Violations of § 1343 of the ACA and the APA, 5 U.S.C. § 706)**

186. This paragraph contains only a description of the Amended Complaint, to which no response is required.

187. This paragraph contains only a characterization of the ACA, which speaks for itself and to which no response is required.

188. This paragraph contains only conclusions of law, not averments of fact to which a response would be required.

189. This paragraph contains only conclusions of law, not averments of fact to which a response would be required.

190. This paragraph contains only conclusions of law, not averments of fact to which a response would be required.

191. This paragraph contains only conclusions of law, not averments of fact to which a response would be required.

192. This paragraph contains only conclusions of law, not averments of fact to which a response would be required.

193. This paragraph contains only conclusions of law, not averments of fact to which a response would be required.

**PRAYER FOR RELIEF**

This paragraph contains only a characterization of the relief sought in the Amended Complaint, and not averments of fact to which a response would be required.

**DEFENSES**

1. The Amended Complaint fails to state a claim upon which relief can be granted.

2. This Court lacks subject matter jurisdiction to grant the relief requested in the Amended Complaint.

Defendant specifically denies all allegations in the Amended Complaint not otherwise answered herein, and denies that Plaintiff is entitled to the relief requested in the Amended Complaint or to any relief whatsoever.

Dated: February 23, 2017

Respectfully submitted,

CHAD A. READLER  
Acting Assistant Attorney General

JOEL McELVAIN  
Assistant Branch Director  
Federal Programs Branch

/s/ *Serena Orloff*  
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Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that on the 23rd day of February, 2017, I caused the foregoing document to be served on counsel for plaintiff by filing with the court's electronic case filing system.

*/s/ Serena M. Orloff*  
Serena M. Orloff