

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.

No. 1:16-cv-00259-MMS
(Judge Sweeney)

**PLAINTIFF HEALTH REPUBLIC INSURANCE COMPANY'S
MOTION FOR APPROVAL OF PROPOSED NOTICE PLAN**

PRELIMINARY STATEMENT

Pursuant to the Court's order (Dkt. No. 30) granting class certification and setting a deadline for the submission of a proposed notice plan, Plaintiff Health Republic Insurance Company ("Plaintiff") respectfully submits this proposed plan for providing Notice to members of the Class.

I. FORM OF NOTICE

Plaintiff's proposed "Notice" is designed to provide potential members of the class with all information required to be disclosed by RCFC 23(c)(2), including: "(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will include in the class any member who requests inclusion; (vi) the time and manner for requesting inclusion; (vii) the binding effect of a class judgment on members under RCFC 23(c)(3)." In addition, the proposed Notice is "written in plain, easily understood language that concisely and clearly provides potential class members" with the required information, *King v. United States*, 84 Fed. Cl. 348, 350 (2008) (internal quotations omitted), and is "objective and neutral." *Babbitt v. Albertson's, Inc.*, No. 92-1883, 1993 WL 150300, at *4 (N.D. Cal. March 31, 1993). Attached as Exhibit 1 for the Court's consideration is the proposed Notice and opt-in form.

II. DISTRIBUTION OF NOTICE

Pursuant to the Court's order, Defendant the United States of America ("Defendant") has provided Plaintiff with what it represents is the name and contact information for all potential Class members that are within its possession and fall within the class definition certified by the Court:

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.

As detailed in the attached Declaration of Jennifer M. Keough (“Keough Decl.”) of JND Legal Administration LLC (“JND”), Plaintiff intends to provide Notice to potential Class members by:

- Sending a cover letter, notice, and opt-in form (“Notice Packet”) via Federal Express to each potential class member and the respective Chief Executive Officer (“CEO”), Chief Financial Officer (“CFO”), General Counsel, and person responsible for risk corridor receivables, if known, including a Federal Express return envelope;
- Sending a Notice Packet via electronic mail to the current or last known email address of each potential class member, based on the contact list provided by the Defendant;
- Creating an informational and interactive case-specific website on which the notices and other important Court documents are posted and where potential class members may opt into the class action online; and
- Making a dedicated team at JND available to provide information and service to the class members.

Keough Decl. ¶ 5.

Plaintiff proposes the following schedule for providing Notice to members of the putative Class:

- Class counsel, through JND, will distribute Notice via email and Federal Express within 20 days following approval by the Court of the notice and schedule.
- Putative members of the Class must return opt-in forms (either through the dedicated website or by returning a hard copy via mail, FedEx, UPS, or fax) no later than 60 days

after Class counsel's deadline to distribute the Notice.

- Within 30 days after the deadline for opt-in forms, Class counsel will certify final membership in the Class by identifying the name of each member of the Class to the Court and providing to the Court and Defendant a copy of the opt-in form completed by each Class member and submitted to Class counsel.

III. SETTLEMENT ADMINISTRATION BY JND LEGAL ADMINISTRATION

Plaintiff has retained JND to serve as class action administrator for Notice program. JND administers settlement of class actions and other major litigation and has operations centers in Denver, Minneapolis, and Seattle. Keough Decl. ¶ 2. JND has broad experience with all aspects of legal administration, and its team has designed and implemented notice programs in hundreds of cases. *Id.* JND drew upon its substantial experience to design the notice plan here and is committed to devote its full resources to providing the Class with timely and useful services in connection with the administration of Class membership and any money distributions in the future. *Id.* ¶¶ 2-5.

CONCLUSION

For foregoing reasons, Plaintiff respectfully requests that the Court (a) approve the proposed form of direct mail notice and opt-in form attached hereto as Exhibit 1; and (b) approve the proposed program for dissemination of notice to putative Class members by means of direct mail via Federal Express and email, as described herein.

DATED: January 23, 2017

Respectfully submitted,

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s/ Stephen Swedlow

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Insurance Company and the Class

CERTIFICATE OF SERVICE

I certify that on January 23, 2017, a copy of the attached **PLAINTIFF HEALTH REPUBLIC INSURANCE COMPANY'S MOTION FOR APPROVAL OF CLASS NOTICE PLAN** was served via the Court's CM/ECF system on all counsel of record.

s/ Stephen Swedlow

Stephen Swedlow