

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HEALTH REPUBLIC INSURANCE)
COMPANY,)
)
Plaintiff,) No. 16-259C
)
v.) Judge Sweeney
)
UNITED STATES OF AMERICA,)
)
Defendant.)

UNITED STATES' RESPONSE TO PLAINTIFF HEALTH REPUBLIC INSURANCE COMPANY'S MOTION FOR CLASS CERTIFICATION

Plaintiff Health Republic Insurance Company (“Health Republic”) filed this action, on behalf of itself and a putative class of health insurance companies, seeking damages under section 1342 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, title I, (Mar. 23, 2010), 124 Stat. 119, codified at 42 U.S.C. § 18062, and its implementing regulation, 45 C.F.R. § 153.510. *See generally* Complaint, Docket No. 1. Since the filing of the Complaint, thirteen other cases seeking damages under that statute and regulation have been filed in this Court. *See First Priority Life Ins. Co. v. United States*, No. 16-587C (Wolski, J.); *Blue Cross and Blue Shield of North Carolina v. United States*, No. 16-651C (Griggsby, J.); *Moda Health Plan, Inc. v. United States*, No. 16-649C (Wheeler, J.); *Land of Lincoln Mutual Health Ins. Co. v. United States*, No. 16-744C (Lettow, J.); *Maine Cnty. Health Options v. United States*, No. 16-967C (Merow, J.); *New Mexico Health Connections v. United States*, No. 16-1199C (Bruggink, J.); *BCBSM, Inc. v. United States*, No. 16-1253C (Coster Williams, J.); *Blue Cross of Idaho Health Service, Inc. v. United States*, No. 16-1384C (Lettow, J.); *Minuteman Health Inc. v. United States*, No. 16-1418C

(Griggsby, J.); *Montana Health CO-OP v. United States*, No. 16-1427C (Wolski, J.); *Alliant Health Plans, Inc. v. United States*, No. 16-1491C (Braden, J.); *Blue Cross and Blue Shield of South Carolina v. United States*, No. 16-1501C (Griggsby, J.); *Neighborhood Health Plan, Inc. v. United States*, No. 16-1659C (Bruggink, J.). While some plaintiffs have presented additional theories of recovery, all plaintiffs assert the same legal question regarding the United States' alleged liability under section 1342 and 45 C.F.R. § 153.510.

On October 5, 2016, Health Republic filed a Motion to Appoint Quinn Emanuel Urquhart & Sullivan, LLP as Interim Class Counsel, Docket No. 15, and a Motion for Class Certification ("Class Certification Motion"), Docket No. 16. On October 25, 2016, the Court granted the unopposed motion for appointment of class counsel and ordered the United States to respond to the Class Certification Motion by December 23, 2016. Docket No. 20. The United States does not dispute that the class as proposed in the Class Certification Motion satisfies the requirements for certification under Rule 23 of the Rules of the United States Court of Federal Claims.

In responding to the Class Certification Motion, the United States does not waive any of the arguments set forth in its pending Motion to Dismiss, Docket No. 8. The United States hereby reserves the right to dispute any material fact and to contest any theory of liability under section 1342 and 45 C.F.R. § 153.510. The United States further reserves the right to contest whether any particular person or entity falls within the class or is otherwise entitled to relief.

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Respectfully submitted,

Dated: December 23, 2016

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Civil Division

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Director
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/s/ Charles E. Canter
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CERTIFICATE OF SERVICE

I certify that on December 23, 2016, a copy of the attached, United States' Response to Plaintiff Health Republic Insurance Company's Motion for Class Certification, was served via the Court's CM/ECF system on Plaintiff's counsel, Stephen Andrew Swedlow.

/s/ Charles E. Canter

Charles E. Canter
U.S. Department of Justice