IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS FORT WORTH DIVISION

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TEXAS, KANSAS, LOUISIANA, INDIANA, WISCONSIN, and NEBRASKA,

Plaintiffs,

v.

UNITED STATES OF AMERICA, UNITED STATES INTERNAL REVENUE SERVICE, and DAVID J. KAUTTER, in his official capacity as ACTING COMMISSIONER OF INTERNAL REVENUE.

Defendants.

Civil Action No. 4:18-cv-00779-O

JOINT MOTION TO STAY

Plaintiffs and Defendants (collectively, the "Parties"), by and through their respective counsel, and pursuant to Federal Rules of Civil Procedure 7, and the local rules of this Court, respectfully move the Court to (1) stay these proceedings, (2) order the parties to report to the Court in 90 days on whether the case should remain stayed, and (3) absolve the Parties of needing to file a Joint Report. In support of this Motion, the Parties state as follows:

- 1. This case concerns Plaintiffs' claims against regulations that govern the 2018 Health Insurance Providers Fee (HIPF), which is part of the Affordable Care Act. ECF No. 1 ¶¶8–10.
- 2. This case relates to another matter pending before the Court concerning the 2014–2016 HIPF. See Texas, et al. v. United States, et al., No. 7:15-CV-00151-O (N.D. Tex.) ("Texas I"). In Texas I, the Court issued orders on the parties' cross motions for summary judgment and plaintiffs' motion for reconsideration, and the parties have appealed, or intend to appeal, those rulings. At a hearing on October 29,

2018, in *Texas I*, the parties agreed to share information concerning the calculation of plaintiffs' HIPF reimbursements to managed care organizations. The parties will report their progress to the Court by November 28, 2018, and advise whether (a) they need more time, (b) have reached agreement on disgorgement amounts, or (c) have come to an impasse. *Texas I*, ECF No. 119.

- 3. In the instant case, the Court has ordered the Parties to confer and prepare a Joint Report by November 14, 2018. ECF No. 24 at 2. The Parties conferred on October 31, 2018, and November 8, 2018, and reached an agreement to file this joint motion.
- 4. Texas I is nearing a stage that will allow the parties to pursue their appeals in the Fifth Circuit. Moreover, the ultimate resolution in Texas I may have an impact on the disposition of the instant case. Accordingly, the Parties believe the Court should stay this case pending final resolution of Texas I.
- 5. "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. American Co.*, 299 U.S. 248, 254 (1936).
- 6. "[A] stay pending the outcome of litigation in another court between the same parties, involving the same or controlling issues, is an appropriate means of avoiding unnecessary waste of judicial resources." Wolf Designs, Inc. v. Donald McEvoy Ltd., Inc., 341 F. Supp. 2d 639, 642 (N.D. Tex. 2004) (citing ACF Industries, Inc. v. Guinn, 384 F.2d 15, 19 (5th Cir. 1967)); accord Greco v. NFL, 116 F. Supp. 3d 744, 761 (N.D. Tex. 2015).
- 7. A stay of this case will preserve judicial resources as the Parties work toward finality in *Texas I*. It will also allow the Fifth Circuit to resolve legal issues that may provide guidance to the Parties and the Court in litigating and resolving this case in the future.

WHEREFORE, the Parties respectfully request that the Court stay this litigation and order them to file a report in 90 days as to whether this case should remain stayed.

Respectfully submitted this the 14th day of November, 2018.

For the Plaintiffs:

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Counsel for Defendants

CERTIFICATE OF CONFERENCE

I hereby certify that, on November 8 and 13, 2018, Plaintiffs' counsel conferred with Defendants' counsel concerning this motion. Defendants advised Plaintiffs that they join the motion.

<u>/s/ David J. Hacker</u> DAVID J. HACKER

CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2018, I electronically filed the foregoing document through the Court's ECF system, which automatically serves notification of the filing on counsel for all parties.

/s/ David J. Hacker DAVID J. HACKER

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[PROPOSED] ORDER GRANTING THE PARTIES' JOINT MOTION TO STAY

Before the Court is Plaintiffs' and Defendants' (collectively, the "Parties") joint motion to stay these proceedings, order the parties to report to the Court in 90 days on whether the case should remain stayed, and absolve the Parties of needing to file a Joint Report. The Court being fully advised, it is HEREBY ORDERED:

- 1. This matter is stayed;
- 2. The Parties shall file a report within 90 days from the date of this Order stating whether these proceedings should remain stayed; and
- 3. The Parties are under no obligation to submit a Joint Report regarding pretrial deadlines at this time.

SO ORDERED this da	ay of November, 2018
	HON. REED O'CONNOR
	HIMITED STATES DISTRICT HIDGI