

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

SENDERO HEALTH PLANS, INC.)	
)	
Plaintiff,)	No. 17-2048C
)	
v.)	Judge Griggsby
)	
THE UNITED STATES,)	
)	
Defendant.)	
)	

STIPULATION FOR ENTRY OF PARTIAL JUDGMENT

To resolve the three risk corridors claims of Plaintiff, Sendero Health Plans, Inc. (“Sendero”), and to permit the immediate entry of a partial final judgment on those claims, it is stipulated and agreed between the Parties:

1. The Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010), 124 Stat. 119, and the Health Care Reconciliation Act of 2010, Pub. L. No. 111-152 (2010), 124 Stat. 1029 (collectively, the “ACA”), created several interrelated programs to expand access to affordable health insurance coverage.

2. Section 1342 (42 U.S.C. § 18062) of the ACA created the risk corridors program. Section 1402 (42 U.S.C. § 18071) authorizes cost-sharing reductions (“CSRs”), and Section 1412 (42 U.S.C. § 18082) authorizes advance payment of CSRs.

3. On December 28, 2017, Sendero filed the Complaint in this Court seeking risk corridors damages under section 1342 of the ACA.

4. On July 11, 2019, the Court entered an order that stayed this case. ECF No. 12. On October 15, 2019, the Court entered an order permitting Sendero to amend its complaint. ECF No. 14.

5. On October 16, 2019, Sendero filed the First Amended Complaint. ECF No. 15. The First Amended Complaint asserts three risk corridors counts, each raising a separate theory for damages arising under section 1342 of the ACA.¹

6. On April 27, 2020, the Supreme Court held that section 1342 “created an obligation neither contingent on nor limited by the availability of appropriations or other funds,” that the obligation was not affected by subsequently-enacted legislation, and that the “petitioners may seek to collect payment through a damages action in the Court of Federal Claims.” *Maine Community Health Options v. United States*, 140 S. Ct. 1308, 1323, 1331 (2020).

7. The Parties agree that *Maine Community Health Options* entitles Sendero to payment under section 1342 for benefit years 2014, 2015, and 2016 in the amount of \$11,855,944.04 (the “Stipulated Amount”) and that this payment resolves entirely the First Amended Complaint for all counts seeking damages arising under section 1342 of the ACA.

8. Accordingly, the Parties jointly request that the Court enter partial final judgment under Rule 54(b) of the Rules of the Court of Federal Claims in favor of Sendero in the amount of \$11,855,944.04 on Count I of the First Amended Complaint (risk corridors benefit years 2014, 2015, and 2016).

9. The Parties agree that there is no just reason for delaying the entry of judgment on Sendero’s claim for damages arising under Section 1342 of the ACA.

¹ Sendero also seeks relief on its CSR claims under Sections 1402 and 1412 of the ACA, *see* First Amended Complaint, Counts IV & V, but this stipulation does not address those claims.

10. The Parties further request that the Court dismiss Counts II and III of the First Amended Complaint with prejudice.

11. Upon entry of partial judgment in the Stipulated Amount, Sendero (HIOS No. 71837), and any and all of Sendero's affiliated entities, release the United States, its agencies, instrumentalities, officers, agents, employees, and servants, from all claims (including attorney fees, costs, and expenses of every kind and however denominated) that Sendero (HIOS No. 71837) and any and all of Sendero's affiliated entities, has asserted, could have asserted, or may assert in the future against the United States, its agencies, instrumentalities, officers, agents, employees, and servants, arising under or related to Section 1342 of the ACA.

Dated: June 29, 2020

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

RUTH A. HARVEY
Director
Commercial Litigation Branch
KIRK T. MANHARDT
Deputy Director

/s/ Phillip M. Seligman
PHILLIP M. SELIGMAN
MARC S. SACKS
FRANCES M. MCLAUGHLIN
TERRANCE A. MEBANE
SHANE HUANG
Commercial Litigation Branch
Civil Division
United States Department of Justice
P.O. Box 875
Ben Franklin Station
Washington D.C. 20044
Tel. (202) 307-1105
Fax (202) 307-0494
Phillip.seligman@usdoj.gov

Attorneys for the United States

/s/ William L. Roberts

William L. Roberts

FAEGRE DRINKER BIDDLE & REATH
LLP

2200 Wells Fargo Center

90 South Seventh Street

Minneapolis, MN 55402-3901

Telephone: (612) 766-7000

Fax: (612) 766-1600

William.Roberts@FaegreDrinker.com

*Attorney for Plaintiff Sendero Health Plans,
Inc.*

CERTIFICATE OF SERVICE

I certify that on June 29, 2020, a copy of the foregoing was served via the Court's CM/ECF system on all counsel of record.

/s/ William L. Robert

William L. Roberts