

**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.

Case No. 16-259C

Judge Sweeney

**JOINT MOTION TO DIVIDE CLASS INTO SUBCLASSES AND  
STIPULATION FOR ENTRY OF PARTIAL JUDGMENT AS TO ONE SUBCLASS**

Pursuant to RCFC 23(c)(5) and in accordance with the Court’s Order, Docket No. 79, Plaintiff Health Republic Insurance Company (“Health Republic”) and the United States move the Court to divide the Class into three subclasses: (1) the “Non-Dispute Subclass,” (2) the “Dispute Subclass,” and (3) the “Arches Subclass,” as defined below. As set forth below, the Parties further stipulate to entry of partial judgment as to the Non-Dispute Subclass.

**STATUTORY BACKGROUND**

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 under which the Parties’ respective claims arise.

The ACA created three interrelated risk mitigation programs. Specifically, section 1341 (42 U.S.C. § 18061) created the reinsurance program; section 1342 (42 U.S.C. § 18062) created the risk corridors program; and section 1343 (42 U.S.C. § 18063) created the risk adjustment

program. Section 1322 of the ACA (42 U.S.C. § 18042), relates to the Consumer Operated and Oriented Plan program, under which the United States provided start-up loan and a solvency loans. Section 1412 (42 U.S.C. § 18082) authorizes advance payment of premium tax credits (“APTCs”) to insurers. Section 1402 (42 U.S.C. § 18071) authorizes cost-sharing reductions (“CSRs”). Sections 1343 (42 U.S.C. § 18063), 1311 (42 U.S.C. § 18031), and 1321 (42 U.S.C. § 18041) of the ACA authorize the United States to collect user fees for its operation of the federally-facilitated exchange (“FFE”) and the risk adjustment program.

### **THE PARTIES’ CLAIMS**

On February 24, 2016, Health Republic filed the Complaint on behalf of itself and others similarly situated, seeking risk corridors damages under section 1342 of the ACA for benefit years 2014 and 2015. The Complaint alleged a single count for violation of the government’s statutory and regulatory mandate to make risk corridor payments.

On January 3, 2017, the Court certified the following class (the “Class”):

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.

Docket No. 30. In the same order, the Court appointed Health Republic as the class representative and appointed Quinn Emanuel Urquhart & Sullivan, LLP as lead counsel for the Class. Ultimately, 153 issuers opted into the Class.

On April 27, 2020, the United States Supreme Court held that section 1342 of the ACA “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). The Parties agree that the Supreme Court’s decision in *Maine Community Health Options* entitles the Class members to receive payment of damages from the United States under ACA section 1342 for risk corridors benefit years 2014 and 2015.

### **THE CLASS SHOULD BE DIVIDED INTO THREE SUBCLASSES**

The Parties agree on the amount due to the Class with respect to all but four class members, who oppose the government’s effort to offset their risk corridor payments against other amounts the government believes are owed under the ACA and/or dispute the government’s proposed risk corridor payment total.<sup>1</sup>

The Parties agree that there is no reason to delay judgment in favor of the Class members who have no dispute with the government, and that the four Class members’ disputes can be determined by this Court through an agreed upon briefing schedule and potential hearing. Accordingly, the Parties request that the “class . . . be divided into subclasses that are each treated as a class under” RCFC 23(c)(5). The Parties propose three subclasses: (1) the “Non-Dispute Subclass,” which consists of Class members who have no dispute with the government; (2) the “Dispute Subclass,” which consists of Class members who have a legal dispute with the government; and (3) the “Arches Subclass”, which consists of Arches Mutual Insurance Company, who has no legal dispute with the government but is not yet authorized to stipulate to judgment.<sup>2</sup>

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<sup>1</sup> The four class members are Colorado Health Insurance Cooperative, Inc. (HIOS ID 20472), Freelancers CO-OP of New Jersey, Inc. (HIOS ID 10191), Meritus Health Partners (HIOS ID 60761), and Meritus Mutual Health Partners (HIOS ID 92045).

<sup>2</sup> Arches and the government have agreed to a resolution of their offset dispute, but Arches must obtain approval from the state court governing its liquidation before stipulating to judgment.

### **1. The Non-Dispute Subclass**

The Parties seek approval of the following Non-Dispute Subclass:

All approved class members offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2014 and 2015 benefit years, whose allowable costs in either the 2014 or 2015 benefit years, as calculated by the Centers for Medicare & Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act), except those entities with ongoing disputes with the government concerning the amount due to the entity under Section 1342 of the Affordable Care Act, entities that dispute the government's right to offset debts against a judgment pursuant to Section 1342, or entities that disputes the extent of any such offset.

The Non-Dispute Subclass consists of all Class members listed on Exhibit A. Health Republic has agreed to serve as the class representative for the Non-Dispute Subclass.

### **2. The Dispute Subclass**

The Parties seek approval of the following Dispute Subclass:

All approved class members offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2014 and 2015 benefit years, whose allowable costs in either the 2014 or 2015 benefit years, as calculated by the Centers for Medicare & Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act), and that dispute the amount due to the entity under Section 1342 of the Affordable Care Act, and/or dispute the government's right to offset debts against a judgment pursuant to Section 1342, and/or dispute the extent of any such offset.

The Dispute Subclass consists of the following four Class members: Colorado Health Insurance Cooperative, Inc. (HIOS ID 20472), Freelancers CO-OP of New Jersey, Inc. (HIOS ID 10191), Meritus Health Partners (HIOS ID 60761), and Meritus Mutual Health Partners (HIOS ID 92045). Colorado Health Insurance Cooperative, Inc. has agreed to serve as the class representative for the Dispute Subclass.

### **3. The Arches Subclass**

The Parties seek approval of the following Arches Subclass:

All approved class members offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2014 and 2015 benefit years, whose allowable costs in either the 2014 or 2015 benefit years, as calculated by the Centers for Medicare & Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act), and who have reached an agreement with the government related to offsets, but must seek approval from a state court prior to stipulating to judgment.

The Arches Subclass consists of Class member Arches Mutual Insurance Company (HIOS ID 27619). Arches Mutual Insurance Company has agreed to serve as the class representative for the Arches Subclass.

**STIPULATION FOR ENTRY OF JUDGMENT  
AS TO THE NON-DISPUTE SUBCLASS**

The Parties stipulate that the Non-Dispute Subclass is entitled to payment from the United States under the risk corridors program for the 2014 and 2015 benefit years in the amount of \$1,921,068,282.41, and that the amount due to each individual Non-Dispute Subclass member is accurately set forth in Exhibit A.

The Parties further stipulate that the United States is entitled to payment from Non-Dispute class member Louisiana Health Cooperative, Inc. (“LAHC”) under the risk adjustment program in the amount of \$1,449,583.07; that the United States is entitled to payment from LAHC under the reinsurance program in the amount of \$159,199.37; that the United States is entitled to payment from LAHC of APTCs in the amount of \$226,803.87; that the United States is entitled to payment from LAHC of CSR reconciliations in the amount of \$1,324,016.47; that the United States is entitled to payment from LAHC of FFE user fees in the amount of \$2,421.73; that the United States is entitled to payment from LAHC of risk adjustment user fees in the amount of \$13,480.58; that the United States is entitled to payment from LAHC on the start-up loan it received from the United States in the amount of \$13,032,260.57; and that the

United States is entitled to payment of interest on these amounts in the amount of \$1,198,469.56.

Accordingly, the Parties jointly request that the Court enter judgment in favor of the Non-Dispute Subclass in the amount of \$1,921,068,282.41, and judgment in favor of the United States in the amount of \$17,406,235.22. The judgment in favor of the United States shall be paid through deduction from the amount owed under this judgment to the Non-Dispute Subclass upon submission of the judgment to the Judgment Fund. The net amount payable by the United States to the Non-Dispute Subclass is \$1,903,662,047.19.

Health Republic requests that the Court direct the government to present this judgment to the Department of Treasury for payment to the Court-appointed claims administrator JND Legal Administration. Health Republic also requests the Court determine the appropriate fees and costs to be paid by the claims administrator with the net judgment proceeds to be paid to each Non-Dispute Subclass member in accordance with the amounts listed in Exhibit A. Health Republic further requests that the Court enter the following schedule for determination of attorney's fees and expenses: Class Counsel shall file its petition for attorney's fees within 7 days of entry of judgment for the Non-Dispute Subclass. Non-Dispute Subclass members shall file any objections or responses to Class Counsel's petition within 21 days of the filing of the fee petition. Class Counsel shall file any replies to objections or responses within 14 days of the expiration of the period to file objections or responses.

Upon entry of final judgment and receipt of payment by the Non-Dispute Subclass, the Non-Dispute Subclass, and any and all of the Non-Dispute Subclass'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 the Non-Dispute Subclass, and any and all of the Non-Dispute Subclass's affiliated entities,

have asserted, could have asserted, or may assert in the future against the United States, its agencies, instrumentalities, officers, agents, employees, and servants, arising under section 1342 of the ACA for benefit years 2014 and 2015.

LAHC, and any and all of its affiliated entities, further releases the United States, their agencies, instrumentalities, officers, agents, employees, and servants, from all claims (including attorney fees, costs, and expenses of every kind and however denominated) that LAHC, and any and all of LAHC's affiliated entities, have asserted, could have asserted, or may assert in the future against the United States, its agencies, instrumentalities, officers, agents, employees, and servants, arising under Section 1342 of the ACA.

The United States releases LAHC, and any and all of its affiliated entities, from all claims (including attorney fees, costs, and expenses of every kind and however denominated) that the United States has asserted, could have asserted, or may assert in the future against LAHC, and any and all of its affiliated entities, arising under Sections 1311, 1321, 1341, 1343, 1402 or 1412 of the ACA, or related to any start-up loan issued pursuant to Section 1322 of the ACA.

DATED: July 17, 2020

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# Exhibit A

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HEALTH REPUBLIC INSURANCE  
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**EXHIBIT A TO JOINT MOTION TO DIVIDE CLASS INTO SUBCLASSES AND  
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HIOS ID	Issuer Name	Total Payments Balance	Offsets	Net RC Balance
16049	All Savers Insurance Company	\$6,697,668.39		
36373	All Savers Insurance Company	\$11,449,513.89		
36677	All Savers Insurance Company	\$294,912.81		
39924	All Savers Insurance Company	\$7,972,985.11		
85947	All Savers Insurance Company	\$62,422,090.52		
92137	All Savers Insurance Company	\$184,407.92		
98971	All Savers Insurance Company	\$7,002,813.66		
67577	Alliance Health and Life Insurance Company	\$369,880.03		
32536	ATRIO Health Plans	\$589,657.01		
60536	Avera Health Plans, Inc.	\$26,120,468.22		
74980	Avera Health Plans, Inc.	\$913,160.23		
15287	Blue Cross & Blue Shield of Rhode Island	\$381,639.63		
16842	Blue Cross and Blue Shield of Florida	\$12,018,283.99		
18558	Blue Cross and Blue Shield of Kansas, Inc.	\$38,218,779.37		
42690	Blue Cross and Blue Shield of Massachusetts HMO Blue, Inc.	\$3,275,797.62		
26065	Blue Cross and Blue Shield of South Carolina	\$11,205,576.67		
49532	BlueChoice HealthPlan of South Carolina, Inc.	\$7,837,407.61		

27811	BlueCross BlueShield Kansas Solutions, Inc.	\$12,968,346.42		
40586	Bluegrass Family Health, Inc.	\$4,440,440.13		
82569	Boston Medical Center Health Plan, Inc.	\$1,445,782.89		
70285	CA Physician's Service dba Blue Shield of CA	\$22,807,199.00		
45127	Capital Advantage Assurance Company	\$2,505,542.65		
82795	Capital Advantage Insurance Company CAIC	\$241,532.88		
10207	CareFirst BlueChoice, Inc.	\$2,560,974.15		
28137	CareFirst BlueChoice, Inc.	\$37,089,252.70		
45532	CareFirst of Maryland, Inc.	\$12,096,305.98		
54192	CareSource Indiana, Inc.	\$1,293,422.26		
45636	CareSource Kentucky Co.	\$3,577,396.03		
92551	CDPHP Universal Benefits Inc.	\$47,697,764.95		
47579	Chinese Community Health Plan	\$593,429.63		
72034	CHRISTUS Health Plan	\$134,369.02		
63312	Colorado Choice Health Plans	\$6,659,644.23		
87416	Common Ground Healthcare Cooperative	\$67,325,233.36		
18581	Community Health Plan of Washington	\$1,187,131.21		
98905	CommunityCare HMO Inc.	\$2,422,216.86		
87698	CommunityCare Life & Health Insurance Co	\$761,894.83		
41895	Consumers Mutual Insurance of Michigan	\$25,843,655.17		
38345	Dean Health Plan	\$31,644,174.98		
66699	Denver Health Medical Plan, Inc	\$380,764.18		
78124	Excellus Health Plan, Inc.	\$31,028,716.81		
88806	Fallon Community Health Plan, Inc.	\$1,218,752.09		
56503	Florida Health Care Plan, Inc.	\$719,021.99		
22444	Geisinger Health Plan	\$36,995,506.57		
75729	Geisinger Quality Options	\$8,372,420.70		
94084	GHMSI	\$4,445,042.32		
85408	GlobalHealth, Inc.	\$6,202,344.71		
47949	Golden Rule Insurance Company	\$0.00		
80473	Group Health Cooperative	\$521,384.24		
34102	Group Health Plan, Inc.	\$11,396,084.43		
40308	Group Hospitalization and Medical Services Inc.	\$155,508.63		

27651	Gundersen Health Plan, Inc.	\$394,393.50		
91058	Gundersen Health Plan, Inc.	\$6,096,264.82		
27357	Health First Health Plan, Inc.	\$85,751.91		
77150	Health First Insurance, Inc.	\$1,708,120.48		
30252	Health Options, Inc.	\$9,475,810.73		
95865	Health Plan of Nevada, Inc.	\$643,589.93		
96383	Health Republic Insurance Company	\$19,565,019.76		
47342	Health Tradition Health Plan	\$1,385,886.58		
92036	HealthSpan	\$12,878,282.88		
20126	HealthSpan Integrated Care	\$21,869,077.92		
19636	HMO Louisiana, Inc.	\$18,013,347.69		
21032	Kaiser Foundation Health Plan of Colo.	\$64,718,412.45		
89942	Kaiser Foundation Health Plan of Georgia	\$10,913,600.35		
90296	Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.	\$17,630,217.35		
94506	Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.	\$3,903,893.99		
95185	Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.	\$34,598,194.30		
40513	Kaiser Foundation Health Plan, Inc.	\$117,740,652.66		
60612	Kaiser Foundation Health Plan, Inc.	\$34,324,694.58		
71287	Kaiser Foundation Healthplan of the NW	\$9,821,230.13		
53789	Keystone Health Plan Central	\$528,671.99		
67202	Louisiana Health Cooperative, Inc.	\$63,331,147.11	\$17,406,235.22	\$45,924,911.89
97176	Louisiana Health Service & Indemnity Company	\$73,296,024.88		
58326	MercyCare HMO, Inc.	\$2,414,171.05		
35334	MercyCare Insurance Company	\$1,170,713.86		
11177	MetroPlus Health Plan	\$16,424,594.93		
11555	New Health Ventures Inc	\$177,328.66		
82483	North Shore-LIJ Insurance Company Inc	\$18,002,649.15		
20507	Optima Health Plan	\$2,229,495.98		
74289	Oscar Insurance Corporation	\$58,424,157.02		
50221	Oscar Insurance Corporation of New Jersey	\$2,132,615.32		
48834	Oxford Health Plans (NJ), Inc.	\$1,357,526.59		
10091	PacificSource Health Plans	\$16,892,224.87		

23603	PacificSource Health Plans	\$17,473,387.21		
60597	PacificSource Health Plans	\$3,930,773.68		
65441	PHPS, Inc. (fka Phoenix Health Plans, Inc.)	\$34,931.14		
50816	Physicians Health Plan of Northern Indiana, Inc.	\$6,370,812.47		
58564	Physicians Plus Insurance Corporation	\$171,543.34		
88102	PreferredOne Insurance Company	\$45,727,888.21		
26734	Premier Health Plan, Inc.	\$2,572,926.75		
57173	Presbyterian Health Plan, Inc.	\$2,063,703.11		
29698	Priority Health	\$14,688,532.68		
29241	Priority Health Insurance Company (PHIC)	\$5,678,007.91		
16698	Prominence HealthFirst	\$501,439.74		
56707	Providence Health Plan	\$7,302,569.66		
70525	QCA Health Plan, Inc.	\$3,957,601.38		
37903	QualChoice Life & Health Insurance Company, Inc.	\$4,524,487.98		
80208	Rocky Mountain Health Care Options	\$366,780.94		
97879	Rocky Mountain HMO	\$34,831,063.53		
38166	Security Health Plan of Wisconsin, Inc.	\$36,886,330.97		
26002	SelectHealth	\$60,598,770.69		
68781	SelectHealth	\$180,603,493.13		
26539	SHA, LLC DBA FirstCare Health Plans	\$7,356,449.15		
92499	Sharp Health Plan	\$37,507.58		
62210	South Dakota State Medical Holding Company, Inc.	\$13,269,548.73		
52664	Summa Insurance Company, Inc.	\$2,091,574.38		
14650	Time Insurance Company	\$494,806.51		
19068	Time Insurance Company	\$1,450,728.94		
19524	Time Insurance Company	\$4,045,974.64		
20544	Time Insurance Company	\$7,352,482.72		
24867	Time Insurance Company	\$253,920.36		
28020	Time Insurance Company	\$7,661,197.18		
29176	Time Insurance Company	\$568,168.32		
29211	Time Insurance Company	\$7,321,151.53		
39996	Time Insurance Company	\$1,451,025.54		
42260	Time Insurance Company	\$925,446.08		
60299	Time Insurance Company	\$234,775.92		

62662	Time Insurance Company	\$61,174,353.15		
67807	Time Insurance Company	\$1,111,551.75		
80863	Time Insurance Company	\$7,624,448.10		
89029	Time Insurance Company	\$431,897.82		
91842	Time Insurance Company	\$4,618,815.85		
29125	Tufts Associated Health Maintenance Org	\$285,907.70		
85736	UCare Minnesota	\$10,464,932.43		
71667	UnitedHealthcare Community Plan, Inc.	\$144,054.47		
31779	UnitedHealthcare Insurance Company	\$166,087.58		
49650	UnitedHealthcare Insurance Company	\$497,317.92		
45002	UnitedHealthcare Life Insurance Company	\$27.28		
59809	UnitedHealthcare Life Insurance Company	\$6,577.07		
68259	UnitedHealthcare of Alabama, Inc.	\$8,688,275.81		
68398	UnitedHealthcare of Florida, Inc.	\$42,820,458.16		
43802	UnitedHealthcare of Georgia, Inc.	\$12,145,393.47		
23671	UnitedHealthcare of Kentucky, Ltd.	\$13,606.24		
38499	UnitedHealthcare of Louisiana, Inc.	\$4,251,825.74		
97560	UnitedHealthcare of Mississippi, Inc.	\$809,174.17		
79881	UnitedHealthcare of New England, Inc.	\$635.07		
54235	UnitedHealthcare of New York, Inc.	\$909,112.89		
54332	UnitedHealthcare of North Carolina, Inc	\$18,401,376.06		
33931	UnitedHealthcare of Ohio, Inc.	\$902,297.30		
24872	UnitedHealthcare of Pennsylvania, Inc.	\$5,937,531.25		
21066	UnitedHealthcare of the Mid-Atlantic Inc	\$14,598.52		
31112	UnitedHealthcare of the Mid-Atlantic Inc	\$128,553.76		
16724	UnitedHealthcare of the Midwest, Inc.	\$115,915.27		
66413	UnitedHealthcare of Utah, Inc.	\$6,697.41		
37833	Unity Health Plans Insurance Corporation	\$11,131,237.20		
88925	University of Arizona Health Plans-University Healthcare, Inc.	\$1,750,150.59		

75293	USAble Mutual Insurance Company	\$15,919,592.28		
67243	Vantage Health Plan, Inc.	\$1,785,495.97		
93689	Western Health Advantage	\$176,519.93		
<b>TOTAL</b>		<b>\$1,921,068,282.41</b>	<b>\$17,406,235.22</b>	<b>\$1,903,662,047.19</b>