

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

_____)	
COMMON GROUND HEALTHCARE)	
COOPERATIVE,)	
)	
Plaintiff,)	No. 1:17-cv-00877-KCD
on behalf of itself and all)	
others similarly situated,)	(Judge Davis)
)	
v.)	
)	
THE UNITED STATES,)	
)	
Defendant.)	
_____)	

**UNOPPOSED MOTION TO WITHDRAW FROM CLASS
AND TRANSFER TO PENDING CASE**

Pursuant to Rule 40.1 and Rule 40.2 of the Rules of the Court of Federal Claims, Plaintiff Common Ground Healthcare Cooperative (“Common Ground” or “Plaintiff”), on behalf of itself and the Cost-Sharing Reduction Class (the “Class”), move this Court to transfer one of the Class members, Tufts Health Public Plans Inc. (“Tufts”) to an existing and indirectly related case, *Harvard Pilgrim Health Care, Inc., et al. v. United States*, No. 1:18-cv-01820-LAS.

As the basis for this motion, Common Ground, via the supporting Declaration of Thomas F. Maloney and public filings, understands the following:

1. Since the filing of these actions, Tufts’ former parent Tufts Health Plan, Inc. (“Tufts Health Plan”) and Harvard Pilgrim have completed a transaction, and all of the Tufts Health Plan and Harvard Pilgrim entities are now part of one combined organization, Point32Health, Inc. Maloney Decl., ¶2.
2. This class action, in part, seeks payment from the Government under Section 1402 of the Patient Protection and Affordable Care Act (“ACA”) for benefit years

2017 and 2018, on behalf of class members who are qualified health plan (“QHP”) issuers under the ACA and satisfy the requirements for payment from the United States under Section 1402 of the ACA. *See* ECF No. 10.

3. Tufts Health Public Plans Inc. (HIOS No. 59763) is currently such a member of the Class in this action, having opted in pursuant to the procedures the Court established. ECF No. 38-1.
4. In *Harvard Pilgrim Health Care, Inc., et al. v. United States*, No. 1:18-cv-01820-LAS, the plaintiff Harvard Pilgrim entities, who are QHP issuers under the ACA and satisfy the requirements for payment from the United States under Section 1402 of the ACA, also seek payment from the Government under Section 1402 of the ACA. Maloney Decl. ¶7; *Harvard Pilgrim*, ECF No. 11-1.
5. Tufts believes this case and *Harvard Pilgrim* are indirectly related under Rule 40.2(b) as both cases present common issues of fact and their consolidation for purpose of coordinated litigation and discovery can be expected significantly to promote the efficient administration of justice. Maloney Decl. ¶¶9, 10.
6. Tufts believes (and neither Common Ground nor the government contests) that withdrawing from the *Common Ground* class action and transferring Tufts to *Harvard Pilgrim* to be consolidated and assigned to the same judge and represented by the same counsel would conserve judicial resources and promote the efficient administration of justice for all parties and the Court, particularly where both cases involve directly related parties, who are part of the same corporate entity and share common administrative and legal resources, and both cases are premised on the same facts and legal theories. In addition, should

discovery become necessary in the litigation, Tufts believes it would promote efficiency for Tufts and Harvard Pilgrim which are now part of the same corporate organization to participate in such discovery, and/or settlement discussions, together rather than separately in *Common Ground* and *Harvard Pilgrim*. Maloney Decl. ¶¶3, 10.

7. Counsel for *Harvard Pilgrim* concurs with this request. Neither Class Counsel nor Government counsel here or in *Harvard Pilgrim* oppose this request.

For the reasons stated herein, Plaintiff respectfully moves this court to allow transfer of plaintiff Tufts from this case to *Harvard Pilgrim Health Care, Inc., et al. v. United States*, No. 1:18-cv-01820-LAS.

April 4, 2023

Respectfully submitted,

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*Attorney for Plaintiff Common Ground
Healthcare Cooperative and the Class*

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

COMMON GROUND HEALTHCARE
COOPERATIVE,

Plaintiff,
on behalf of itself and all
others similarly situated,

V.

THE UNITED STATES,

Defendant.

Case No. 17-877

Judge Sweeney

DECLARATION OF THOMAS F. MALONEY

1. I am currently the Senior Associate General Counsel for Point32Health, Inc. I have firsthand knowledge of what I state in this declaration.

2. Point32Health, Inc. is a combined organization comprised of various entities comprising the former Tufts Health Plan, Inc. organization, including but not limited to Tufts Health Public Plans Inc. (“Tufts”) and various entities comprising the Harvard Pilgrim Health Care, Inc. (“Harvard Pilgrim”) organization as a result of a corporate transaction in 2021.

3. As part of a combined entity, Tufts and Harvard Pilgrim share common administrative and legal resources.

4. Harvard Pilgrim entities and Tufts are Qualified Health Plan (“QHP”) issuers under the Affordable Care Act (“ACA”) and satisfy the requirements for payment from the United States under Section 1402 of the ACA.

5. There is a pending class action at the Court of Federal Claims, *Common Ground HealthCare Cooperative v. United States*, No. 1:17-cv-00877-KCD. This class action, in part, seeks payment from the Government under Section 1402 of the ACA for benefit years 2017 and

2018, on behalf of class members who are QHP issuers under the ACA and satisfy the requirements for payment from the United States under Section 1402 of the ACA.

6. Tufts Health Public Plans Inc. (HIOS No. 59763) is currently a member of the class in the *Common Ground* class action.

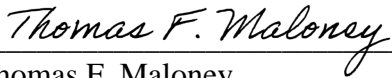
7. Harvard Pilgrim entities have filed an individual action at the Court of Federal Claims, also seeking payment from the United States under Section 1402 of the ACA for benefit years 2017 and 2018. The case is *Harvard Pilgrim Health Care, Inc., et al. v. United States*, No. 1:18-cv-01820-LAS.

8. Harvard Pilgrim is represented by Crowell & Moring LLP in the *Harvard Pilgrim* action.

9. With respect to Tufts, both *Common Ground* and *Harvard Pilgrim* present common issues of fact and legal theories.

10. Withdrawing Tufts from the *Common Ground* class action and transferring Tufts to *Harvard Pilgrim* to be consolidated and assigned to the same judge and represented by the same counsel would conserve judicial resources and promote the efficient administration of justice for all parties and the Court, particularly where both cases involve directly related parties, who are part of the same corporate entity and share common administrative and legal resources, and both cases are premised on the same facts and legal theories. In addition, should discovery become necessary in the litigation, it would promote efficiency for Tufts and Harvard Pilgrim which are now part of the same corporate entity to participate in such discovery, and/or settlement discussions, together rather than separately in *Common Ground* and *Harvard Pilgrim*.

I declare, under penalty of perjury, that the foregoing facts are true and correct to the best of my knowledge.



Thomas F. Maloney
Senior Associate General Counsel
Point32Health, Inc.

April 4, 2023

Respectfully submitted,