

1 XAVIER BECERRA
Attorney General of California
2 JULIE WENG-GUTIERREZ
Senior Assistant Attorney General
3 GREGORY D. BROWN, SBN 219209
NIMROD P. ELIAS, SBN 251634
4 Deputy Attorneys General
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5461
6 Fax: (415) 703-5480
E-mail: Gregory.Brown@doj.ca.gov
7 *Attorneys for Plaintiff the State of California*
[Additional counsel listed in signature block]

8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 **THE STATE OF CALIFORNIA; THE**
12 **STATE OF CONNECTICUT; THE STATE**
13 **OF DELAWARE; THE DISTRICT OF**
14 **COLUMBIA; THE STATE OF ILLINOIS;**
15 **THE STATE OF IOWA; THE**
16 **COMMONWEALTH OF KENTUCKY; THE**
17 **STATE OF MARYLAND; THE**
18 **COMMONWEALTH OF**
19 **MASSACHUSETTS; THE STATE OF**
20 **MINNESOTA; THE STATE OF NEW**
21 **MEXICO; THE STATE OF NEW YORK;**
22 **THE STATE OF NORTH CAROLINA; THE**
23 **STATE OF OREGON; THE**
24 **COMMONWEALTH OF PENNSYLVANIA;**
25 **THE STATE OF RHODE ISLAND; THE**
26 **STATE OF VERMONT; THE**
27 **COMMONWEALTH OF VIRGINIA; and**
28 **THE STATE OF WASHINGTON,**

Plaintiffs,

v.

23 **DONALD J. TRUMP, President of the United**
24 **States; ERIC D. HARGAN, Acting Secretary**
25 **of the United States Department of Health**
26 **and Human Services; UNITED STATES**
27 **DEPARTMENT OF HEALTH AND**
28 **HUMAN SERVICES; STEVEN T.**
MNUCHIN, Secretary of the United States
Department of the Treasury; UNITED
STATES DEPARTMENT OF THE
TREASURY; and DOES 1-20,

Defendants.

Case No. 4:17-cv-05895-KAW

**PLAINTIFFS' EX PARTE MOTION
FOR A TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT ISSUE**

RELIEF REQUESTED BY 4:00 P.M.
THURSDAY, OCTOBER 19, 2017

1 **EX PARTE MOTION FOR A TEMPORARY RESTRAINING ORDER AND ORDER TO**
2 **SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

3 PLEASE TAKE NOTICE that Plaintiffs the State of California; the State of Connecticut;
4 the State of Delaware; the District of Columbia; the State of Illinois; the State of Iowa; the
5 Commonwealth of Kentucky; the State of Maryland; the Commonwealth of Massachusetts; the
6 State of Minnesota; the State of New Mexico; the State of New York; the State of North Carolina;
7 the State of Oregon; the Commonwealth of Pennsylvania; the State of Rhode Island; the State of
8 Vermont; the Commonwealth of Virginia; and the State of Washington (collectively, the States)
9 hereby move the Court pursuant to Federal Rule of Civil Procedure 65 for a temporary restraining
10 order (TRO) and order to show cause why a preliminary injunction should not issue against
11 Defendants Donald J. Trump, President of the United States; Eric D. Hargan, Acting Secretary of
12 the United States Department of Health and Human Services; the United States Department of
13 Health and Human Services; Steven T. Mnuchin, Secretary of the United States Department of
14 the Treasury; and the United States Department of the Treasury, and their officers, agents,
15 servants, employees, attorneys, and any other persons who are in active concert or participation
16 with them.

17 The Plaintiff States respectfully move the Court to enter a nationwide temporary restraining
18 order and preliminary injunction requiring the Defendants to continue making the cost-sharing
19 reduction payments required by the Patient Protection and Affordable Care Act (ACA) pending
20 judicial resolution of this action. This motion is based on this Ex Parte Motion, the
21 accompanying Complaint for Declaratory and Injunctive Relief, the accompanying Memorandum
22 of Points and Authorities, the accompanying proposed Temporary Restraining Order, the
23 accompanying supporting declarations, as well as the papers, evidence, and records on file in this
24 action, and any other written or oral evidence or argument presented at or before the time this
25 motion is heard by the Court.

26 As set forth in accompanying Memorandum of Points and Authorities, a TRO is necessary
27 by **4:00 p.m. on October 19, 2017** to prevent immediate and irreparable harm to the Plaintiff
28 States and the millions of Americans who benefit from affordable health care coverage under the

1 ACA. An essential component of the ACA requires the federal government to make periodic and
2 timely payments to insurance providers to reimburse them for cost-sharing reductions (CSRs) that
3 are provided to insured individuals. The next installment of CSR reimbursement payments is
4 scheduled to be paid on October 20, 2017. However, on October 12, 2017, the Trump
5 Administration abruptly announced that it would no longer make CSR payments. Accordingly,
6 the Plaintiff States seek a TRO and preliminary injunction to preserve the status quo and require
7 Defendants to continue making the CSR reimbursement payments required by the ACA pending
8 judicial resolution of this action.

9 Notice of this Ex Parte Motion has been and will be provided to Defendants as set forth in
10 the accompanying Certificate Regarding Notice to Defendants of Ex Parte Motion.

11 Dated: October 18, 2017

Respectfully submitted,

12 XAVIER BECERRA
13 Attorney General of California
14 JULIE WENG-GUTIERREZ
Senior Assistant Attorney General

15 */s/ Gregory D. Brown*

16 */s/ Nimrod P. Elias*

17 GREGORY D. BROWN
18 NIMROD P. ELIAS
Deputy Attorneys General
Attorneys for Plaintiff the State of California

19 GEORGE JEPSEN
20 Attorney General of Connecticut
JOSEPH R. RUBIN
Associate Attorney General
21 ROBERT W. CLARK
Special Counsel to the Attorney General
22 *Attorneys for Plaintiff the State of Connecticut*

23 MATTHEW P. DENN
24 Attorney General of Delaware
AARON R. GOLDSTEIN
State Solicitor
25 SARAH FISHMAN GONCHER
JOHN H. TAYLOR
26 Deputy Attorneys General
27 *Attorneys for Plaintiff the State of Delaware*

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

KARL A. RACINE
Attorney General for the District of Columbia
ROBYN R. BENDER
Deputy Attorney General
Attorneys for Plaintiff the District of Columbia

LISA MADIGAN
Attorney General of Illinois
DAVID F. BUYSSE
Deputy Chief, Public Interest Division
Attorneys for Plaintiff the State of Illinois

THOMAS J. MILLER
Attorney General of Iowa
NATHAN BLAKE
Deputy Attorney General
Attorneys for Plaintiff the State of Iowa

ANDY BESHEAR
Attorney General
Commonwealth of Kentucky
LA TASHA BUCKNER
Executive Director
Office of Civil and Environmental Law
S. TRAVIS MAYO
TAYLOR PAYNE
Assistant Attorneys General
Attorneys for Plaintiff the Commonwealth of Kentucky

BRIAN E. FROSH
Attorney General of Maryland
STEVEN M. SULLIVAN
Solicitor General
Attorneys for Plaintiff the State of Maryland

MAURA HEALEY
Attorney General of Massachusetts
ERIC GOLD
Assistant Attorney General
Attorneys for Plaintiff the Commonwealth of Massachusetts

LORI SWANSON
Attorney General of Minnesota
ALAN GILBERT
Solicitor General
JASON PLEGGENKUHLE
KATHERINE KELLY
Assistant Attorneys General
Attorneys for Plaintiff the State of Minnesota

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

HECTOR H. BALDERAS
Attorney General of New Mexico
TANIA MAESTAS
Chief Deputy Attorney General
Attorneys for Plaintiff the State of New Mexico

ERIC T. SCHNEIDERMAN
Attorney General of New York
BARBARA D. UNDERWOOD
Solicitor General
STEVEN C. WU
Deputy Solicitor General
HOWARD MASTER
Senior Enforcement Counsel
LISA LANDAU
Bureau Chief, Health Care Bureau
ERIC HAREN
Special Counsel and Senior Advisor
Attorneys for Plaintiff the State of New York

JOSHUA H. STEIN
Attorney General of North Carolina
RYAN Y. PARK
Deputy Solicitor General
SRIPRIYA NARASIMHAN
Deputy General Counsel
Attorneys for Plaintiff the State of North Carolina

ELLEN F. ROSENBLUM
Attorney General of Oregon
HENRY KANTOR
Special Counsel to the Attorney General
J. NICOLE DeFEVER
Assistant Attorney General
Attorneys for Plaintiff the State of Oregon

JOSH SHAPIRO
Attorney General of Pennsylvania
JONATHAN SCOTT GOLDMAN
Executive Deputy Attorney General
MICHAEL J. FISCHER
Chief Deputy Attorney General
PATRICK M. GREENE
Deputy Attorney General
Attorneys for Plaintiff the Commonwealth of Pennsylvania

PETER KILMARTIN
Attorney General of the State of Rhode Island
REBECCA TEDFORD PARTINGTON
Chief, Civil Division
MICHAEL W. FIELD
Assistant Attorney General
Attorneys for Plaintiff the State of Rhode Island

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THOMAS J. DONOVAN, JR.
Attorney General of Vermont
BENJAMIN D. BATTLES
Solicitor General
Attorneys for Plaintiff the State of Vermont

MARK R. HERRING
Attorney General of Virginia
MATTHEW R. MCGUIRE
Acting Deputy Solicitor General
Attorneys for Plaintiff the Commonwealth of Virginia

ROBERT W. FERGUSON
Attorney General of Washington
JEFFREY T. SPRUNG
RENE D. TOMISSER
Assistant Attorneys General
Attorneys for Plaintiff the State of Washington