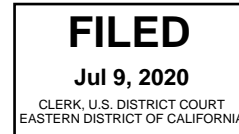


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7 *Attorneys for State of California*

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

11
12 UNITED STATES, ex rel. JEFFREY MAZIK,
STATES OF CALIFORNIA, COLORADO,
13 GEORGIA, HAWAII, MARYLAND, THE
DISTRICT OF COLUMBIA, THE STATE OF
14 WASHINGTON,

2:19-CV-0559 JAM KJN

**THE PLAINTIFF STATES' NOTICE OF
ELECTION TO DECLINE
INTERVENTION**

15 Plaintiffs,

[FILED UNDER SEAL]

16 v.

17 KAISER PERMANENTE, INC., KAISER
18 FOUNDATION HEALTH PLAN, INC.,
EASTERSEALS, INC.,

19 Defendants.
20

21
22 Pursuant to the California False Claims Act, Cal. Gov't Code § 12652(c)(6)(B), the State of
23 California notifies this Court of its decision not to intervene in this action. Pursuant to their
24 respective state false claims acts, the States of Colorado, Georgia, Hawaii, Maryland, Virginia,
25 Washington, and the District of Columbia (collectively, with California, the "Plaintiff States")
26 notify this court of their decisions not to intervene in this action. The Plaintiff States have
27 authorized Kevin Davis, Deputy Attorney General for the State of California, to sign this Notice
28 on behalf of the Plaintiff States.

1 Additionally, the Maryland False Health Claims Act provides that “[i]f the State does not
2 elect to intervene and proceed with the action . . . before unsealing the complaint, the court shall
3 dismiss the action.” Md. Code Ann., Health Gen, § 2-604 (a)(7). Accordingly, the State of
4 Maryland requests that all claims asserted on behalf of the State of Maryland be dismissed without
5 prejudice.

6 Although the Plaintiff States decline to intervene, we respectfully refer the Court to Cal.
7 Gov’t Code § 12652(c)(1) and the Plaintiff States’ respective false claims acts, with the exception
8 of the Maryland False Health Claims Act, which allow the relator to maintain this action in the
9 name of the Plaintiff States; providing, however, that the action may be dismissed only if the court
10 and the Plaintiff States give written consent to the dismissal and their reasons for consenting. The
11 United States Court of Appeals for the Ninth Circuit has held that, notwithstanding this language,
12 the Federal False Claims Act, after which the Plaintiff States’ false claims act are patterned,
13 provides the United States with the right only to a hearing when it objects to a settlement or
14 dismissal of the action. *U.S. ex rel. Green v. Northrop Corp.*, 59 F.3d 953, 959 (9th Cir. 1995);
15 *U.S. ex rel. Killingsworth v. Northrop Corp.*, 25 F.3d 715, 723-25 (9th Cir. 1994). Therefore, the
16 Plaintiff States (other than Maryland) request that, should either the relator or the defendants
17 propose that this action be dismissed, settled, or otherwise discontinued, this Court provide the
18 Plaintiff States with an opportunity to be heard before ruling or granting its approval.

19 Furthermore, the Plaintiff States’ respective false claims acts permit the Plaintiff States to be
20 served with copies of all pleadings filed in the action (e.g., Cal. Gov’t Code § 12652(f)(1)). The
21 Plaintiff States (other than Maryland) reserve their right to order any deposition transcripts and to
22 intervene in this action, for good cause, at a later date. The Plaintiff States (other than Maryland)
23 also reserve their right to seek the dismissal of the relator’s action or claim pursuant to the Plaintiff
24 States’ respective false claims acts (e.g., Cal. Gov’t Code § 12652(e)(2)(A)) and to request a stay
25 of discovery pursuant to the Plaintiff States’ respective false claims acts (e.g., Cal. Gov’t Code §
26 12652(h)).

27 Finally, the Plaintiff States request that the relator’s Complaint, this Notice, and the attached
28 proposed Order be unsealed and that the seal be lifted as to all matters subsequently occurring in

1 this action. The Plaintiff States request that all other papers on file in this action remain under seal
2 because in discussing the content and extent of the Plaintiff States' investigations, such papers are
3 provided by law to the Court alone for the sole purpose of evaluating whether the seal and time for
4 making an election to intervene should be extended.

5 A proposed order accompanies this notice.

6
7 Dated: July 10, 2020

Respectfully submitted,

8 XAVIER BECERRA
9 Attorney General of California

10
11 */s/ Kevin C. Davis*

12 _____
13 KEVIN C. DAVIS
14 Deputy Attorney General
15 *Attorneys for Plaintiff State of California*

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this action. My business address is: 2329 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833.

True and correct copies of the foregoing documents entitled:

**THE PLAINTIFF STATES’ NOTICE OF ELECTION TO DECLINE INTERVENTION
[PROPOSED] ORDER TO UNSEAL**

was served in the manner stated below:

SERVED BY UNITED STATES MAIL: by placing said copies in a postpaid envelope addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es), and by depositing said envelope and its contents in the United States Mail at Sacramento, California.

Catherine J. Swann
United States Attorney’s Office
501 I Street, Suite 10-100
Sacramento, CA 95814

David L. Scher
Hoyer Law Group, PLLC
315 Montgomery Street, 10th Floor
San Francisco, CA 94104

Veronica Nannis
Joseph, Greenwald & Laake, P.A.
6404 Ivy Lane, Suite 400
Greenbelt, MD 20770

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

7/10/2020

Sharon Brecht

/s/ Sharon Brecht

Date

Printed Name

Signature