IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA and the STATE OF MICHIGAN, Plaintiffs, v. BLUE CROSS BLUE SHIELD OF MICHIGAN, a Michigan nonprofit healthcare corporation, Defendant.	Civil Action No. 2:10-cv-14155-DPH-MKM Hon. Denise Page Hood Mag. Judge Mona K. Majzoub

STIPULATED MOTION AND BRIEF
TO DISMISS WITHOUT PREJUDICE

On March 18, 2013, the State of Michigan enacted laws (2013 P.A. 5 and 2013 P.A. 6) that ban the use of most favored nation clauses by insurers, health maintenance organizations, and nonprofit health care corporations in contracts with providers. Specifically, beginning January 1, 2014, those laws will prohibit the use of most favored nation clauses by health insurers, health maintenance organizations, health care corporations, and any other entities providing health insurance in provider contracts, and that prohibition will prevent defendant Blue Cross Blue Shield of Michigan and its subsidiary Blue Care Network (a health maintenance organization) from using the most favored nation clauses challenged in this action, or other most favored nation clauses

with hospitals in Michigan. The prohibition on MFNs will apply whether Blue Cross is organized as a nonprofit health care corporation, a health insurer, a health maintenance organization, a nonprofit mutual disability insurer, or any other entity.

In the interim, the Commissioner of the Michigan Office of Financial and Insurance Regulation has ordered that no insurer may use MFNs unless the MFN is submitted to and approved by the Commissioner. On February 8, 2013, the Commissioner issued Bulletin 2013-04-INS, stating that "all MFNs currently in use by any insurer are void and unenforceable" as of February 1, 2013, and that "any attempt by an insurer to use or enforce an MFN clause in any provider contract, without the Commissioner's prior review and approval, is prohibited . . . ." Blue Cross has acknowledged that the Commissioner's Order No. 12-035-M makes Blue Cross's MFN clauses void and ineffective.

The parties have conferred and agree that the injunctive relief sought by the United States of America and State of Michigan against Blue Cross Blue Shield of Michigan is now unnecessary in light of the enactment of 2013 P.A. 5 and 2013 P.A. 6, and the Commissioner's order.

Therefore, the parties respectfully move the Court, pursuant to Fed. R. Civ. P. 41(a)(2), for an order in the form attached, dismissing the action without prejudice and without costs to any party.[1]

Consented to by:

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[1] Blue Cross notes that there is one pending discovery motion filed in this action by non-parties, the motion to quash filed by Joseph T. Aoun et al. (Docket No. 226). That motion relates to a subpoena served by Blue Cross in this action and applicable to all related actions pursuant to the Court's prior orders coordinating discovery, and also to cross-notices by the Shane Plaintiffs. It is fully briefed, with responses filed in all three actions and a reply filed in this action. The dismissal of this action does not moot that motion, which should be treated as having been filed in all three actions.

CERTIFICATE OF SERVICE

I hereby certify that on the date inscribed above, I filed the foregoing via the Electric Case Filing system in the United States District Court for the Eastern District of Michigan, and that the CM/ECF system will send a notification of such filing to all counsel of record.

/s/ Ryan Danks
Ryan Danks