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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
5  
6 FOR THE COUNTY OF MARION

7 STATE OF OREGON, Acting by and through  
8 Patrick Allen, Director of the Oregon  
9 Department of Consumer and Business Services,  
10  
11 Plaintiff,

12 v.

13 ZOOM HEALTH PLAN, INC, an Oregon  
14 corporation,  
15  
16 Defendant.

Case No.

VERIFIED PETITION OF PATRICK ALLEN,  
DIRECTOR OF OREGON DEPARTMENT OF  
CONSUMER AND BUSINESS SERVICES

Plaintiff is not required to pay the filing  
fee in advance pursuant to ORS 20.140.

17 I, Patrick Allen, on oath, hereby depose and say that:

18 1. I am the Director of the Oregon Department of Consumer and Business Services  
19 (“DCBS”) and hereby submit this verified petition pursuant to ORS 734.130 in support of the  
20 stipulated motion for an order appointing DCBS as receiver for defendant Zoom Health Plan Inc.  
21 (“ZHP”) and authorizing the rehabilitation of ZHP.

22 2. Defendant ZHP is an Oregon health care service contractor subject to the provisions  
23 of ORS chapter 734 governing insurers.

24 3. ZHP is under DCBS supervision pursuant to ORS 734.043 and 734.055. DCBS  
25 has now concluded that statutory grounds exist for placing ZHP under court-supervised  
26 receivership and rehabilitating the insurer.

4. Under ORS 734.150(1), the Court may order a receivership and rehabilitation  
when the insurer is “impaired.” An insurer is “impaired” for purposes of ORS chapter 734

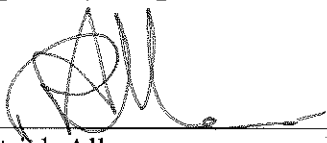
1 remedies "when its allowed assets do not exceed its liabilities plus its required contributions."  
2 ORS 734.014(4).

3 5. As of December 31, 2016, ZHP reported capital and surplus of \$2,873,168 in a  
4 financial statement submitted to DCBS. Pursuant to ORS 734.150(4), the insurer's financial  
5 condition is such that its further transaction of business would be hazardous to its policyholders,  
6 creditors, stockholders or the public.

7 7. Under OAR 836-013-0110(5), an insurer's continued operation is hazardous when  
8 it suffers an operating loss greater than 50 percent of its excess capital and surplus. For the 12  
9 months ending December 31, 2016, ZHP recorded an operating loss of \$4,746,487. Pursuant to  
10 ORS 750.045(1), ZHP is required to maintain capital and surplus of not less than \$2.5 million.  
11 The company's reported capital and surplus at year end exceeded this minimum by only  
12 \$373,168. The operating loss of \$4,746,487 is more than 50 percent of the amount of excess  
13 capital and surplus. Therefore, ZHP's continued operation is hazardous, and the insurer is  
14 eligible for receivership and rehabilitation pursuant to ORS 734.150(4).

15 8. Wayne Johnson, of Risk and Regulatory Consulting, LLC, is qualified to serve as  
16 a deputy receiver and to assist DCBS pursuant to ORS 734.230.

17  
18 **I hereby declare under penalty of perjury under the laws of Oregon that the above**  
19 **statement is true to the best of my knowledge and belief, and that I understand it is made**  
20 **for use as evidence in court and is subject to penalty for perjury.**

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

STATE OF OREGON, Acting by and through  
Patrick Allen, Director of the Oregon  
Department of Consumer and Business Services,

Plaintiff,

v.

ZOOM HEALTH PLAN INC., an Oregon  
corporation,

Defendant.

Case No.

STIPULATED ORDER  
APPOINTING RECEIVER

THIS MATTER came before the court on the stipulation of the parties for an order appointing a receiver pursuant to ORS 734.150, 750.055, and 734.220. The court, having reviewed the evidence and stipulations submitted by the parties, finds that Defendant Zoom Health Plan Inc. ("ZHP") is impaired for purposes of ORS 734.150(1) and that its continued operation would be hazardous pursuant to ORS 734.150(4). The court further finds that it is necessary for a receiver, as defined in ORS 734.014(7), to take charge of, manage, and rehabilitate ZHP. Failure to appoint a receiver could result in financial loss to third parties. The court further finds that ZHP has consented to the entry of this order.

It is THEREFORE ORDERED THAT:

1           1.     Patrick Allen, Director of Oregon Department of Consumer and Business  
2 Services is appointed receiver of all of the property and assets of ZHP and is appointed  
3 rehabilitator of ZHP.

4           2.     Wayne Johnson, of Risk and Regulatory Consulting, LLC is appointed special  
5 deputy receiver to act for the director as the director deems necessary in this receivership.

6           3.     The receiver shall take any and all action necessary to manage and control the  
7 business and financial affairs of ZHP. Such action may include disciplining, terminating,  
8 suspending, or employing individuals, as necessary to carry out the day-to-day functions of the  
9 business.

10          4.     The receiver is vested with all of ZHP's right, title, and interest in and to all assets  
11 and property of every kind, both tangible and intangible, and shall assume full and exclusive  
12 control of, all the assets of the receivership. The receiver is authorized to take all steps necessary  
13 to secure such property, rehabilitate the same as necessary, and to maintain or close all existing  
14 accounts or open new accounts for the receivership.

15          5.     The receiver is directed to immediately take and maintain possession and control  
16 of the portion of ZHP's business premises occupied by ZHP, conduct all of the business and  
17 affairs of ZHP or so much thereof as he may deem appropriate, manage the affairs of ZHP and  
18 rehabilitate ZHP, if feasible, or seek liquidation if the receiver determines that rehabilitation is  
19 not feasible.

20          6.     All authority of all owners or persons acting on their behalf, officers, directors,  
21 and managers of ZHP is hereby suspended and vested with the receiver until further written  
22 order of this court.

23          7.     All third-party vendor contracts and provider contracts with ZHP shall continue in  
24 full force and effect, and the receiver shall be authorized to maintain and administer such  
25 contracts according to the terms of the agreements between ZHP and the third-party vendor or  
26 provider, regardless of any prior notice of or attempt at cancellation by such vendor or provider,

1 until such time as the receiver or this court directs otherwise, and any action by the parties to the  
2 contrary is stayed by entry of this order. The receiver shall also have the right to terminate and  
3 suspend the performance of the estate under such contracts in his sole discretion. All providers  
4 shall continue to perform services and provide supplies to subscribers of ZHP as long as such  
5 subscribers continue to pay premium until further notice by the receiver. Any claim by a  
6 provider with respect to services or supplies provided on or after the date hereof shall be an  
7 expense of administration and shall be paid in the ordinary course by the receiver. Providers  
8 shall not seek to collect from subscribers any amount owed for services or supplies provided by  
9 such provider, except for subscriber cost-sharing under the terms of the ZHP insurance policy,  
10 during any period during which the subscriber shall have paid the premium owed.

11 8. ZHP shall not engage in any advertising or solicitation whatsoever.

12 9. ZHP and its policyholders, owners, shareholders, officers, directors, managing  
13 general agents, agents, attorneys, accountants, actuaries, servants, employees, banks, savings and  
14 loan associations, credit unions, and any other partnership, company, or entity controlled by  
15 same or persons acting for or on their behalf are hereby ordered to immediately provide to the  
16 receiver property, business, affairs, transactions, bank accounts, electronic fob access to the  
17 portion of ZHP business premises occupied by ZHP, keys to safe deposit boxes, to advise the  
18 receiver of the combinations to any safes, safe-keeping devices or restricted access entries, any  
19 passwords to electronic information or online accounts with vendors, computers, all primary and  
20 secondary storage media, documents, claims files, software, electronic data, e-mail, websites,  
21 copying rights, trademarks, patents, books, records, accounts, contracts, rights of action, and all  
22 other assets of ZHP, including all real property, and the portion of the premises occupied by  
23 ZHP, and are hereby enjoined from the transaction of the business of ZHP, except with the  
24 concurrence of the receiver or until further order of this court.

25 10. The receiver may maintain existing accounts or establish new accounts at any  
26 financial institutions insured by an agency of the United States government, shall deposit in

1 those accounts funds received in connection with the receivership property, shall take possession  
2 of securities and certificates of deposit, and shall deposit in interest-bearing accounts money not  
3 expended for receivership purposes.

4 11. The receiver shall assume custody and control of all the books and records of the  
5 receivership; it shall maintain accurate records of all receipts and expenditures.

6 12. All persons and entities who become aware of the court's order, including the  
7 parties named in this action, shall have an affirmative duty to cooperate with the receiver, shall  
8 refrain from interfering with the receiver in the exercise of his duties, shall refrain from  
9 exercising any control with respect to the receivership or its assets, and such persons shall  
10 immediately turn over to the receiver all books and records of the receivership, as well as any  
11 other property of the receivership, as requested by the receiver, notwithstanding their dismissal  
12 by the receiver.

13 13. The receiver is and shall be the holder of all privileges held by ZHP, including the  
14 attorney-client and all other evidentiary privileges, with the power to waive such privileges, in  
15 the receiver's sole discretion. The receiver shall acknowledge that repositories of records of ZHP  
16 may contain documents of other entities and individuals that are subject to privileges and other  
17 protections against disclosure. The receiver, ZHP and any necessary third parties shall develop a  
18 protocol, to be approved by the court, for identifying and preserving privileges and confidences  
19 that are not subject to the authority of the receiver. The development of such protocol shall not  
20 unduly delay the receiver's access to ZHP records.

21 14. The receiver is entitled to permit such further operation of ZHP as the receiver  
22 may deem necessary to be in the best interests of the policyholders and creditors of ZHP.

23 15. The receiver will pay or authorize ZHP to pay, all payroll, associated employee  
24 withholdings, employer tax and benefit contributions, and reimbursement of reasonable business  
25 expenses incurred through the date of entry of this order by the court when due;

26

1           16.     The receiver is authorized to enter into contracts, obtain professional services,  
2 including attorneys, accountants, and real estate professionals, pay claims, collect debts,  
3 purchase insurance as necessary to carry out the terms of the receivership, as the receiver deems  
4 reasonable and necessary, and the receiver may appear in, prosecute, and defend such legal  
5 actions as are necessary to carry out its obligations. ORS 734.250.

6           17.     The special deputy receiver is entitled to compensation at normal hourly rates for  
7 services performed as receiver and is entitled to reimbursement for all costs and expenses,  
8 including but not limited to professional fees, incurred in performing services in this matter. The  
9 deputy receiver's compensation and reimbursements shall be paid from the assets of the  
10 receivership. ORS 734.230.

11          18.     All premiums and other debts due to ZHP shall be paid to the receiver unless  
12 otherwise directed.

13          19.     Any reinsurance premiums due to or payable by ZHP shall be withheld from,  
14 remitted to, or disbursed by the receiver or to another party at the receiver's discretion. The  
15 receiver shall administer reinsurance losses recoverable or payable by ZHP. All correspondence  
16 concerning reinsurance shall be between the receiver and the reinsuring company or intermediary  
17 unless requested by the receiver.

18          20.     Upon request by the receiver, any company providing telephone services to ZHP  
19 shall provide a reference of calls from the numbers presently assigned to ZHP to any number  
20 designated by the receiver or perform any other services or changes necessary to the conduct of  
21 the receivership.

22          21.     Any bank, savings and loan association, financial institution, governmental entity,  
23 and any other person which has on deposit or in its control any funds, accounts, or other assets of  
24 ZHP or which may owe amounts to ZHP shall immediately transfer title and control of such  
25 assets to the receiver or shall make such payment to the receiver and are hereby instructed that  
26 the receiver has absolute control over such assets and rights to payment. The receiver may

1 change the name of such accounts, withdraw the contents, or take such action necessary for the  
2 proper conduct of this receivership. No bank, savings and loan association, financial institution,  
3 governmental entity, or any other person shall exercise any form of setoff, recoupment,  
4 administrative freeze, or other similar remedy whatsoever, or refuse to transfer any funds or  
5 assets or pay any amounts owed to the receiver without the permission of this court.

6 22. Any entity furnishing telephone, water, electric, cable, internet, sewage, garbage,  
7 or trash removal services to ZHP shall maintain such service and shall transfer any such accounts  
8 to the receiver as of the date of the order entered herein, unless instructed to the contrary by the  
9 receiver.

10 23. Any data processing service which has custody or control of any data processing  
11 information and records, including, but not limited to, source documents, data processing cards,  
12 input tapes, all types of storage information, master tapes, or any other recorded information  
13 relating to ZHP shall transfer custody and control of such records to the receiver. The receiver  
14 shall compensate any such entity for the actual use of hardware and software which the receiver  
15 finds to be necessary to the receivership. Compensation shall be based on the monthly rate  
16 provided for in contracts or leases with ZHP that were in effect when this proceeding was  
17 instituted or based upon such contracts as may be negotiated by the receiver, for the actual time  
18 such equipment and software is used by the receiver.

19 24. The United States Postal Service is directed to provide any information requested  
20 by the receiver regarding ZHP and to handle future deliveries of ZHP's mail as directed by the  
21 receiver.

22 25. The receiver may conduct an investigation of ZHP, its subsidiaries and affiliates  
23 to uncover and make fully available to the court the true state of ZHP's financial affairs and the  
24 reasons for its impairment and hazardous condition. In furtherance of this investigation, ZHP, its  
25 parent corporations, its subsidiaries, its affiliates, its third party administrators, and all other  
26 persons shall make all books, documents, accounts, records, email, and affairs which either



1 belong to or pertain to ZHP, available for full, free, and unhindered inspection and examination  
2 by the receiver during normal business hours (8:00 a.m. to 5:00 p.m.) Monday through Friday, or  
3 such other times as the receiver deems necessary, from the date of this order. ZHP and the  
4 above-specified entities shall fully cooperate with the receiver. Such cooperation shall include,  
5 but not be limited to, the taking of oral testimony under oath of ZHP's policyholders,  
6 shareholders, owners, officers, directors, managing general agents, agents, accountants,  
7 actuaries, attorneys, servants, managers, trustees, adjusters, employees, or independent  
8 contractors of ZHP, its parent, affiliates, and subsidiaries, and any other person or entity who  
9 possesses or possessed any authority or control over any segment of the affairs of ZHP in either  
10 their official, representative, or individual capacities, and the production of all documents needed  
11 to disclose the true state of ZHP's affairs and the reasons for its insolvency. Nothing in this  
12 order shall be construed as a waiver of any privilege or obligation of confidentiality.

13         26. Except with the concurrence of the receiver or until further written order of this  
14 court, all suits, proceedings, and seizures against ZHP in any court are hereby stayed in order to  
15 prevent the obtaining of any preference, judgment, seizure, levy, or lien, and to preserve the  
16 property and assets of ZHP.

17         27. All persons and entities are enjoined and stayed from obtaining preferences,  
18 judgments, attachments, or other like liens, or executing on any lien against ZHP, its property  
19 and assets while in the receiver's possession and control as of the date of this order until further  
20 orders to the contrary. ORS 734.320.

21         28. All persons and entities are enjoined and stayed from exercising any right of set  
22 off, recoupment, administrative freeze, or any similar remedy with respect to any amounts owed  
23 to ZHP or the receiver. All persons and entities are enjoined and stayed from exercising any  
24 right to terminate, cancel, suspend performance, or exercise any remedy under any agreement  
25 with ZHP.

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1           29.    No bond is required in connection with the appointment of the receiver, pursuant  
2 to ORS 734.210(4).

3           30.    ZHP and its shareholders, members, subscribers, agents, officers, directors,  
4 employees, and all other persons are hereby enjoined from:

- 5           a.    transacting any business of ZHP, including, but not limited to:
  - 6                i.   the writing, issuance, or renewal of any certificate of coverage,  
7                insurance policy, binder, or endorsement to an existing policy or  
8                certificate of coverage;
  - 9                ii.   the payment of claims and of any policy or certificate of coverage  
10               benefits;
  - 11               iii.   the incurring of any claim or loss adjustment expense;
- 12          b.    selling, transferring, disposing, encumbering, or concealing the assets of ZHP;
- 13          c.    disposing of any records or other documents belonging to or relating to the  
14               business and affairs of ZHP;
- 15          d.    withholding any books, accounts, documents, email or other records related to  
16               the business of ZHP from the receiver;
- 17          e.    disposing of or withholding any computer, laptop, or server which contains or  
18               may contain information or data regarding ZHP;
- 19          f.    interfering with the receiver or with this proceeding;
- 20          g.    committing or permitting any waste of the assets of ZHP; dissipating or  
21               transferring any bank accounts of ZHP;
- 22          h.    demanding, collecting, or in any other way diverting or using any of the funds  
23               of ZHP;
- 24          i.    instituting or prosecuting further any action or proceeding against ZHP;
- 25          j.    obtaining or attempting to obtain any preference, judgment, attachment,  
26               garnishment, or lien against ZHP, its assets, or its policy holders;

- 1 k. levying execution against ZHP, its assets, or its policy holders;  
2 l. exercising any right of set off, recoupment, administrative freeze, or any  
3 similar remedy with respect to any amounts owed to ZHP or the receiver;  
4 exercising any right to terminate, cancel, suspend performance, or exercise  
5 any remedy under any agreement with ZHP;  
6 m. selling or making any deed for nonpayment of taxes or assessing any taxes  
7 that would lessen the value of the assets of ZHP to the receiver;  
8 n. performing any other threatened or contemplated act that might lessen the  
9 value of the assets of ZHP or prejudice the rights of the policyholders,  
10 creditors, or shareholders of ZHP, or the administration of this proceeding,  
11 all except as directed by the receiver.

12 DATED this \_\_\_\_ day of April, 2017

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\_\_\_\_\_  
Circuit Court Judge

IT IS SO STIPULATED:

ELLEN F. ROSENBLUM  
Attorney General  
*Daniel Rice*  
Carolyn G. Wade, # 832120  
Daniel J. Rice # 084536  
Assistant Attorneys General  
Of Attorneys for Plaintiff  
Department of Justice  
1162 Court Street NE  
Salem, OR 97301  
Telephone: 503-934-4400  
Fax: (503) 373-7067  
Email: [Carolyn.G.Wade@doj.state.or.us](mailto:Carolyn.G.Wade@doj.state.or.us)

*Gregory Chaimov*  
Gregory Chaimov, #822180  
James G. Parker, #124164  
Of Attorneys for Zoom Health Plan Inc.  
Davis Wright Tremaine  
1300 SW Fifth Ave, Suite 2400  
Portland, OR 97201  
Telephone: 503-778-5328  
Email: [gregorychaimov@dwt.com](mailto:gregorychaimov@dwt.com)  
Email : [jamesparker@dwt.com](mailto:jamesparker@dwt.com)

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

STATE OF OREGON, Acting by and through  
Patrick Allen, Director of the Oregon  
Department of Consumer and Business Services,

Plaintiff,

v.

ZOOM HEALTH PLAN, INC, an Oregon  
corporation,

Defendant.

Case No.

STIPULATED MOTION FOR  
APPOINTMENT OF RECEIVER AND  
ORDER TO REHABILITATE PURSUANT  
TO ORS 734.150 AND ORS 734.220

Plaintiff is not required to pay the filing  
fee in advance pursuant to ORS 20.140.

The State of Oregon, Acting by and through Patrick Allen, Director of the Oregon Department of Consumer and Business Services (“DCBS”), and Zoom Health Plan, Inc. (“ZHP”), hereby jointly move the court to appoint a receiver to take charge of, manage, and rehabilitate ZHP pursuant to ORS 734.150 and ORS 734.220. This motion is supported by the accompanying verified petition of Patrick Allen, Director of DCBS, the stipulation of the parties, as evidenced by the signatures of their counsel below, and the form of Stipulating Order Appointing Receiver.

The parties further move the court for an order pursuant to ORS 734.140(2) enjoining the officers, directors, stockholders, members, subscribers, agents, and employees of ZHP and all other persons, from:

1. transacting any business of ZHP;
2. selling, transferring, disposing, encumbering, or concealing the assets of ZHP;
3. interfering with the receiver or with this proceeding;

- 1           4.     committing or permitting any waste of the assets of ZHP;
- 2           5.     dissipating or transferring any bank accounts of ZHP;
- 3           6.     demanding, collecting, or in any other way diverting or using any of the funds of
- 4                 ZHP;
- 5           7.     instituting or prosecuting further any action or proceeding against ZHP;
- 6           8.     obtaining or attempting to obtain any preference , judgment, attachment,
- 7                 garnishment, or lien against ZHP, its assets, or its policy holders;
- 8           9.     levying execution against ZHP, its assets, or its policy holders;
- 9           10.    selling or making any deed for nonpayment of taxes or assessing any taxes that
- 10                would lessen the value of the assets of ZHP to the receiver;
- 11          11.    destroying, withholding or concealing any books, accounts, documents or other
- 12                records related to the business of ZHP from the receiver;
- 13          12.    performing any other threatened or contemplated act that might lessen the value of
- 14                the assets of ZHP or prejudice the rights of the policyholders, creditors, or
- 15                shareholders of ZHP, or the administration of this proceeding,
- 16                all until further order of the court, except as directed by the receiver.

17           Defendant does not oppose such an injunction and consents to entry of the accompanying  
18 Stipulated Order Appointing Receiver. Defendant is executing this motion for itself and not on  
19 behalf of or with intent for the motion or order to bind any other person.

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1 DATED this 21<sup>st</sup> day of April, 2017.

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IT IS SO STIPULATED:

ELLEN F. ROSENBLUM  
Attorney General

Daniel Rice  
Carolyn G. Wade, # 832120  
Daniel J. Rice # 084536  
Assistant Attorneys General  
Of Attorneys for Plaintiff  
1162 Court Street NE  
Salem, OR 97301  
Telephone: 503-934-4400  
Fax: (503) 373-7067  
Email: Carolyn.G.Wade@doj.state.or.us

Gregory A Chaimov  
Gregory Chaimov, #822180  
James Parker, #124164  
Of Attorneys for Zoom Health Plan Inc.  
Davis Wright Tremaine  
1300 SW Fifth Ave, Suite 2400  
Portland, OR 97201  
Telephone: 503-778-5328  
Email: gregorychaimov@dwt.com  
Email: jamesparker@dwt.com